

GAO

Report to the Chairman, Subcommittee
on Federal Services, Post Office and
Civil Service, Committee on
Governmental Affairs, U.S. Senate

June 1991

EXPERTS AND CONSULTANTS

Weaknesses in Hiring Process at State's Office of Inspector General



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The Honorable David Pryor
Chairman, Subcommittee on Federal Services,
Post Office and Civil Service
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This report, prepared at your request, reviews whether the State Department's Office of Inspector General (1) omitted references to itself in an annual oversight report to Congress as a deliberate attempt to conceal internal problems and (2) inappropriately hired and paid experts and consultants.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to interested parties and make copies available to others upon request.

The major contributors to this report are listed in appendix VII. Please contact me at (202) 275-5074 if you or your staff have any questions.

Sincerely yours,

A handwritten signature in cursive script that reads "Bernard L. Ungar".

Bernard L. Ungar
Director, Federal Human
Resource Management Issues

Executive Summary

Purpose

In a draft report to Congress, the Department of State's Office of Inspector General (OIG) identified itself regarding certain problems with the appointment of experts and the reporting of consulting contracts. The references were omitted from the March 5, 1990, final report. The Chairman of the Subcommittee on Federal Services, Post Office and Civil Service asked GAO to determine (1) if the references were omitted to deliberately conceal problems and (2) whether OIG followed established rules and procedures when hiring experts and consultants.

Background

By law, 31 U.S.C. 1114(b), inspectors general must report to Congress annually about management controls and the quality of consulting contract data submitted to the Federal Procurement Data System. For its fiscal year 1989 review, OIG included controls over expert and consultant appointments and its own hiring of experts and consultants.

Part of OIG's responsibilities include inspecting management and security at U.S. Foreign Service posts, such as embassies. OIG hired retired Foreign Service officers to help staff inspections. It believed their experience and independence increased the credibility of its findings and recommendations. OIG hired them either by appointment as experts or by contract as consultants.

GAO reviewed OIG's 24 expert appointments and 12 consultant contracts effective during fiscal year 1989, the year covered by the March 1990 report.

Results in Brief

Evidence about the omissions in OIG's March 1990 final report to Congress did not point to a deliberate attempt to conceal internal OIG problems. Rather, the omissions appeared to stem from (1) reporting before complete information about problems was known and (2) misunderstandings among OIG staff.

Inspectors general are not explicitly required by law to review their own expert and consultant activities, and OIG no longer plans to do so. GAO agrees with this decision but believes State OIG expert and consultant activities should be scrutinized by appropriate State Department officials.

OIG and State's Bureau of Personnel shared responsibility for the 24 expert appointments. Contrary to federal personnel procedures, Personnel approved the appointments without a clear explanation from OIG

as to the experts' duties. In GAO's view, some of the duties did not appear to require an expert, and many of the appointees lacked the qualifications necessary to be appointed as experts. However, they all could have been appropriately hired under a different appointment authority.

Although the Federal Personnel Manual instructs both the State Department and the Office of Personnel Management to do periodic personnel management evaluations, such an evaluation has not been done at the State Department since at least 1984. A personnel management evaluation might have identified some of the problems that existed.

OIG and the Office of Acquisitions share responsibility for the 12 contracts. A poor job was done of awarding all 12 contracts because neither OIG nor Acquisitions followed federal contracting regulations. Also, because contractors were used in a manner similar to appointees, the contracts, setting up retirees' as independent contractors, appear to be inappropriate. Moreover, contracts to bypass or undermine pay limitations violate policy in federal contracting regulations.

OIG is no longer appointing experts or contracting for consultants. It is hiring retired Foreign Service officers as temporary employees.

GAO's Analysis

Deliberate Concealment Unapparent

The draft report said that from a Department-wide sample of 15 appointments, 5 were improper because the work could have been done by a regular government employee instead of an appointee. The draft named two of the organizations that made the appointments. One of those named was OIG. The final report also said that five appointments were improper, but no appointing organization was named. According to an OIG official, the final report was less specific because all facts about the apparent problem were not known and because the problem was to be further explored later on in the second phase of OIG's ongoing work. GAO corroborated that all pertinent facts, such as the correct reasons why appointments were improper, were not known at the time the final report was issued and, therefore, believes reporting of the entire issue should either have been deferred or qualified to indicate results were preliminary. (See pp. 16 to 22.)

The deletion of material regarding OIG contracts apparently stemmed from a misunderstanding. According to audit staff, they deleted the draft's discussion about OIG contracts not reported to the Federal Procurement Data System because the Assistant Inspector General for Audits directed that references to OIG be omitted from the final report. However, according to the Assistant Inspector General, his instruction was directed at the discussion about State OIG appointments, not contracts. (See pp. 17 to 18.)

In both instances, the evidence did not lead us to conclude that OIG omitted the references to deliberately conceal internal problems. For example, the total number of improper appointments reported did not change. With respect to the unreported contracts, audit staff acknowledged that the Assistant Inspector General for Audits did not specifically instruct that this discussion be deleted and that they assumed his instruction applied to all references to OIG. In both instances, reference to organizations other than OIG were also omitted. Moreover, the fact that OIG included its own activities in the review in the first place, even though it was not specifically required to do so, suggests it was not opposed to its own problems being uncovered. (See pp. 15 to 18.)

In the future, OIG plans to not include an assessment of its own operations when auditing the State Department. Because OIG is not independent when auditing its own activities, GAO agrees with this decision. However, OIG activities should not be free from scrutiny. State OIG expert and consultant activities should be evaluated by appropriate State Department officials. The results of this evaluation should then be reported to Congress. (See p. 22.)

Expert Appointments Were Questionable

To decide whether or not to approve appointments, the State Department's Bureau of Personnel relied on documentation, submitted by appointing offices, that described individuals' qualifications, position duties, and the appointment justification. However, a basic discrepancy existed in the documentation OIG provided to Personnel. OIG's position description said the 24 appointees would train inspectors; its appointment justifications said they would do inspections. Notwithstanding the discrepancy, Personnel approved the appointments. A Personnel official said the Bureau was reluctant to disapprove appointments because program offices protest that important departmental efforts are being blocked. GAO pointed out that even so, Personnel was responsible for questioning the discrepancy in documents and lacked an adequate basis to approve appointments. (See pp. 24 to 25.)

OIG acknowledged that the written expert position description did not accurately reflect the appointees' duties. However, OIG also maintained that appointees' actual duties required an expert. Given the absence of an accurate written description, GAO asked OIG officials to orally describe the appointees' duties. Although all appointments were made to a single position, the oral descriptions suggested, to GAO, the need for at least four separate positions. Further, on the basis of the described duties and the Federal Personnel Manual definition of an expert position, GAO concluded that one position required an expert, and one did not. Information about the other two positions was not sufficient to reach a conclusion. (See pp. 26 to 29.)

OIG officials also maintained that the 24 individuals appointed were, in fact, experts. However, in GAO's opinion, 14 of the appointees' qualifications did not fit the Federal Personnel Manual definition of an expert. They did not possess knowledge, skills, and abilities clearly superior to an ordinarily competent Foreign Service officer. Five appointees' qualifications met this definition. Information about the remaining five was insufficient to reach an opinion. (See pp. 29 to 32.)

The Federal Personnel Manual instructs the State Department and the Office of Personnel Management (OPM) to perform periodic personnel management evaluations as a means to identify and correct inadequate personnel practices. However, neither OPM nor the State Department have fulfilled their responsibility to do these periodic evaluations. OPM has not reviewed the State Department since at least 1984. The State Department planned to do its first evaluation in 1991. (See pp. 34.)

Contracting Requirements Not Followed

A poor job was done of awarding all 12 contracts. The Competition in Contracting Act of 1984 and implementing regulations required full and open competition unless specified circumstances justified otherwise. All 12 contracts were awarded without competition. For example, of the 12, 3 cited an exception not provided for in the law, 2 included no justification, and 6 contained justifications that did not support the exception cited. OIG awarded three contracts directly, and the Office of Acquisitions awarded the other nine on behalf of the State OIG. OIG officials said they used Acquisitions because they lacked the technical expertise to prepare contracts in accordance with the law. OIG officials initially could not explain why they did not use Acquisitions to prepare the three contracts OIG awarded directly but later, in commenting on a draft of this report, said it was because OIG's need for services was more immediate than could be accommodated by the Office of Acquisitions. According to

the contracting officer responsible for contracts awarded by the Office of Acquisitions, contract provisions might not have been reviewed sufficiently because of an unusually large workload and, thus, contracts were not awarded according to requirements. (See pp. 42 to 49.)

Recommendations

GAO is making recommendations to the State Inspector General, the Secretary of State, and the Director of OPM. Chief among them are that

- the State Inspector General should ensure that all official State OIG position descriptions are complete and accurate and should refrain from awarding contracts directly until the necessary contracting expertise is developed. (See pp. 38 and 53.)
- the Secretary of State should (1) in conjunction with the State Inspector General, designate appropriate persons to evaluate State OIG expert and consultant activities and report the results annually to Congress; (2) ensure that periodic personnel management evaluations of the State Department's Bureau of Personnel are done; and (3) follow up to ensure the actions taken by the Office of Acquisitions to improve contracting correct the problems GAO identified. (See pp. 23, 38, and 54.)
- the Director of OPM should ensure that a comprehensive personnel management evaluation of the State Department be done as scheduled in 1991. (See p. 39.)

Agency Comments

In written comments on a draft of this report, the State Inspector General said he agreed with and accepted GAO's recommendations to him but questioned much of the report's content. The major flaw, he said, was GAO's failure to place OIG actions into a context of legitimate and well-intentioned efforts to comply with his statutory mandate. GAO does not question either the State Inspector General's intentions to comply with the statutory mandate to inspect foreign posts or his authority to hire experts and consultants. However, in carrying out that mandate, GAO believes the Inspector General must ensure that applicable laws, regulations, and procedures are complied with as well. Such compliance, in certain instances, was absent from the personnel appointments and contracts GAO reviewed. The Inspector General's comments are reproduced in appendix IV and are evaluated there and in chapters 2, 3, and 4.

The State Department's comments did not respond specifically to GAO's recommendations. However, State did cite recent corrective actions taken to address problems raised in the report. For example, the Bureau

of Personnel reviewed all of the Department's 265 expert and consultant appointments and terminated 101. All of OIG's expert appointments in effect at the time of Personnel's review were among the 101 appointments terminated. Appendix V contains the State Department's comments and GAO's response.

The Director of OPM said that a personnel management evaluation of the State Department is scheduled to begin in early Spring 1991. The OPM Director's comments are discussed in chapter 3 and reproduced in appendix VI.

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Abbreviations

AIGA	Assistant Inspector General for Audits
CICA	Competition in Contracting Act of 1984
CSPM	Civil Service Personnel Management
FAM	Foreign Affairs Manual
FAR	Federal Acquisition Regulation
FPDS	Federal Procurement Data System
FPM	Federal Personnel Manual
IRS	Internal Revenue Service
OIG	Office of the Inspector General
OPM	Office of Personnel Management

Introduction

By statute, inspectors general are required to report annually to Congress on the effectiveness of management controls and the improvement of the accuracy and completeness of consulting contract information within their agencies. The Department of State's Office of Inspector General (OIG) included in its fiscal year 1989 report a review of management controls over appointments of and contracts for experts and consultants, including those OIG made or awarded. Although included in a draft report, references linking OIG with certain problems identified by the review were omitted from OIG's March 5, 1990, final report to Congress.

OIG Used Experts and Consultants to Help Do Inspections

Within OIG, the Office of Inspections and the Office of Security Oversight used experts and consultants. These offices inspect management and security at Foreign Service posts and often employed retired Foreign Service officers as experts and consultants to help do those inspections. According to State's Inspector General, retired officers are needed because they bring to inspections needed Foreign Service experience, knowledge, and, as retirees, independence because their careers are not affected by what they find and report.

We recognize that the appropriate employment of experts and consultants can be a legitimate and economical way to improve government services and operations. However, such employment must comply with the specific, applicable laws and regulations.

The retired Foreign Service officers were hired by either government appointment or contract. Those OIG hired by appointment were called experts and worked on an intermittent schedule. They were appointed under the authority of section 3109, title 5 of the United States Code, making them government employees again. The intermittent appointments could not exceed 1 year and could be renewed for another year each time they ended. Those hired by contract were called consultants and were intended to be nongovernment employees (independent contractors). The contract periods varied within a 12-month period.

Expert appointees and independent contractor consultants are subject to different requirements and limitations. For example, expert appointees can be appointed under section 3109 without competition; consultants who are hired as independent contractors are usually required to compete with one another for contracts. The qualifications of persons appointed as experts must, according to the Federal Personnel Manual (FPM), clearly exceed those of ordinarily competent persons in a field.

This is not true for contractor consultants. Expert appointees can supervise other government employees; independent contractor consultants cannot. Expert appointees who work on an intermittent schedule are limited to working no more than 130 days in a year. Those expert appointees who are retired federal workers are subject to a “ceiling” on the total income they can receive annually from their salary and retirement pay. Independent contractor consultants, because they are not government employees, are not subject to these restrictions.¹

According to OIG officials, the decision of whether to have a retiree work under appointment or contract was based on whether the retiree’s particular expertise would be needed on a limited basis or whether it would be needed year-round. Because, as Foreign Service retirees working on an intermittent schedule, appointees could not receive compensation for a full year, those whose skills were anticipated to be needed year-round were asked to work under contract. Those whose skills were anticipated to be needed for a more limited time were given appointments.

During fiscal year 1989, 33 individuals, primarily retired Foreign Service officers, worked as experts or consultants for OIG. Of the 33 individuals, 21 held appointments, 9 held contracts, and 3 held both appointments and contracts during the year. Most of the 33 worked for the Office of Inspections and/or the Office of Security Oversight.

Office of Inspections

The Office of Inspections inspects the activities and operations that are under the direction, coordination, and supervision of ambassadors² to ascertain their consistency with the foreign policy of the United States and with the responsibilities of the Secretary of State. The Office also inspects domestic activities related to foreign affairs; for example, it has reviewed the ambassadorial appointment process. Inspection responsibilities are prescribed by law. Although statutorily required to inspect organizations (e.g., an embassy) at least every 5 years, OIG’s internal goal is to do so every 3 to 4 years.

¹In addition to being hired by contract, consultants may also be appointed. However, OIG did not appoint consultants in fiscal year 1989. Appointed consultants are government employees and, thus, face the same limitations on work days and pay as appointed experts. However, unlike experts, their qualifications need not exceed those of ordinarily competent persons in a field. Also, under the FPM, appointed consultants serve primarily as advisors and do not supervise or perform operational functions.

²Ambassador is a courtesy title held by persons who attain the position of Chief of Mission; Chiefs of Mission are the President’s representatives in foreign countries. Once attained, a person retains through life the courtesy title of ambassador.

According to OIG officials, inspections are done by multidisciplinary teams and cover such topics as executive management, implementation of political and economic policy, intelligence relationships, and consular operations and administration. In cases where the size and/or complexity of the inspection create a need for additional staff with specific backgrounds, Inspections management selects individuals from its pool of retired Foreign Service officers. Inspections teams issued 66 reports in fiscal year 1989.

Most regularly employed inspectors were Foreign Service officers. Not counting experts and consultants, the Office of Inspections had 31 inspectors at the beginning of fiscal year 1989. About one-fourth were civil servants, and three-fourths were active Foreign Service officers on assignment with OIG. The standard length of a Foreign Service assignment was 2 years. However, the length of an assignment can be extended up to 4 years.

Office of Security Oversight

The Office of Security Oversight, which was created in January 1989, evaluates (1) the formulation and dissemination of security standards set in Washington, D.C., and (2) the implementation of these standards at all U.S. diplomatic and consular posts abroad. Within this office, the Security Inspections Division assesses the ability of each post to respond to threats from terrorism, crime, and intelligence activities.³ According to OIG officials, inspection teams from the Security Inspections Division are generally composed of individuals with specific technical expertise such as technical security, computer security, physical security, and counterintelligence. Team members also come from other government agencies within the intelligence community.

In addition to members with technical backgrounds, each team usually includes either a retired former ambassador or a retired deputy chief of mission. According to an OIG official, these retirees, who have returned to the State Department as experts and consultants, bring a knowledge of the Foreign Service that teams need to function successfully but do not otherwise possess. Security Oversight inspection teams issued 10 reports during fiscal year 1989, which was the Office of Security Oversight's first year of operation.

³The Office of Security Oversight contains another division, the Security Audits Division. This Division examines how security standards are developed and disseminated and the applicability of these standards in the "real world." This division has not made regular use of experts and consultants.

Objectives, Scope, and Methodology

In accordance with the March 1990 request of the Chairman of the Subcommittee on Federal Services, Post Office and Civil Service, Senate Committee on Governmental Affairs, our objectives were to

- determine, to the extent practicable, whether OIG had appropriately omitted references to itself from the March 5, 1990, report;
- evaluate whether OIG followed appropriate authority and procedures to appoint experts;
- evaluate whether OIG followed appropriate procedures to contract with consultants;
- determine whether the combined annuity and salary payments received by reemployed Foreign Service annuitants stayed within statutory limits; and
- explain differences between compensation limits imposed on reemployed annuitants of the Civil Service versus those of the Foreign Service (see app. II).

To accomplish our objective concerning the omissions, we reviewed the pertinent draft and final reports and the documents gathered and prepared by OIG audit staff in support of those reports. We interviewed OIG audit team members, managers, and attorneys to learn why they took the actions they did or provided the advice they gave.

One concern the Subcommittee Chairman had was whether, in omitting information, OIG deliberately attempted to conceal its internal problems from Congress. Such a determination required establishing intent. We were unable to unequivocally establish intent because much of the available evidence was testimonial and differed according to individual perceptions and understandings of the situation.

To assess whether appropriate authority and procedures were followed to hire experts and consultants, we reviewed the process OIG used to hire the 33 experts and consultants who worked in fiscal year 1989. We focused on this group because the March 5, 1990, final OIG report covered experts and consultants working in fiscal year 1989. We also tried to determine whether the authorities and procedures used in fiscal year 1989 were being followed in fiscal year 1990.

We used experienced personnel specialists and a contracting officer to examine the official personnel file and/or contract file for each of the 33 experts and consultants. We compared information from these files with the standards contained in the FPM and the Federal Acquisition Regulation (FAR) that implemented laws governing the hiring of experts and

consultants and applied to the State Department and other federal agencies. In addition to documents in the files, we reviewed other relevant memoranda and records prepared by OIG and other State Department offices. For example, we reviewed memoranda between OIG and the State Department's Bureau of Personnel on the appointment of experts.

We interviewed OIG managers and other State Department personnel and contracting officials about the authorities and procedures they followed to hire experts and consultants. We also interviewed OIG managers about the duties of experts and consultants. We interviewed, on the basis of their availability, a total of 10 inspectors, experts, and consultants about experts' and consultants' work and responsibilities. We relied on these interviews to determine the experts' duties and responsibilities because an accurate official description of those duties and responsibilities did not exist. We also reviewed 45 reports issued during fiscal year 1989 by the Inspections and Security Oversight offices to obtain a better understanding of the inspection work they do.

Finally, to assess whether pay ceilings were adhered to, we reviewed annuity, payroll, and voucher data for calendar year 1989 to determine whether applicable requirements were followed in paying the experts and consultants. We also interviewed State Department officials responsible for tracking annuity and salary payments to reemployed Foreign Service annuitants.

We obtained written comments from the State Department, OIG, and the Office of Personnel Management (OPM) on a draft of this report. Those comments are reproduced in appendixes IV, V, and VI and, as appropriate, are evaluated in the appendixes and in chapters 2, 3, and 4.

Our work was done in Washington, D.C., between April and October 1990 in accordance with generally accepted government auditing standards.

Evidence Does Not Point to Deliberate Concealment of OIG Problems

OIG issued a report to Congress on experts and consultants in the State Department. In a draft of that report, OIG linked itself to certain problems with the appointment of experts and the reporting of consulting contracts. The March 5, 1990, final report to Congress, however, omitted those references that linked OIG to these problems. We found that OIG's rationale for deleting the expert appointment references stemmed from concerns about premature reporting. Deleting the consulting contract references apparently resulted from a misunderstanding. In both instances, the evidence did not lead us to conclude that OIG omitted the references to deliberately conceal internal problems.

Evaluation Included OIG Activities

By law, 31 U.S.C. 1114(b), inspectors general must evaluate annually the progress agencies make in establishing effective management controls and improving the accuracy and completeness of consulting contract information provided to the Federal Procurement Data System (FPDS). The inspectors general's reports are to be included in their respective agency's budget justifications to Congress.

For fiscal year 1989, OIG did its review in two phases. The first phase included a review of the State Department's accuracy and completeness of consultant contract data provided to FPDS as well as the management controls established for expert and consultant appointments.¹ The second phase was to focus on the State Department's use and cost effectiveness of contract consultant services. The first phase began in November 1989 and was planned to be reported to Congress in January 1990 with the President's budget submission. Phase two was to be completed after the phase one report was submitted to Congress and was in progress as of November 1990.

Although not explicitly required to do so, OIG included its own activities in the review. The inclusion was consistent with OIG's then general practice of including its own activities in its reviews of the State Department.

Final Report Excluded References to OIG

In early February 1990, in keeping with standard OIG procedures where drafts are reviewed and changes can be made, the Assistant Inspector General for Audits (AIGA) reviewed the audit staff's draft phase one

¹Management controls, set forth in Office of Management and Budget (OMB) Circular A-120, January 4, 1988, cover expert and consultant appointments as well as contracts.

report. A summary of one issue discussed in the draft was also informally reviewed by an attorney in OIG's Office of Counsel. The AIGA directed that changes be made to the draft. In the course of making the changes, references to OIG were removed from the draft. After that, the draft moved to the next level of review before going to the Inspector General for final approval. On March 5, 1990, the State Inspector General signed the final phase one report, sending it to Congress.²

Nature of Data Excluded

The February 9, 1990, draft of the phase one report included a discussion of how OIG had inappropriately appointed an expert inspector and how four OIG contracts had been incorrectly excluded from FPDS reporting. Those discussions were omitted from the final report submitted to Congress.

In doing the evaluation, OIG audit staff reviewed a sample of 15 out of 264 expert and consultant appointments from across the State Department; 1 of the 15 was made by OIG. The February 9, 1990, draft said that 5 of the 15 appointments, including 1 by OIG, were inappropriate because appointees were performing work that regular government employees could do.³ The draft discussed the specific circumstances that made each of the five appointments inappropriate and, for two of the five, also identified the office that made the appointment. One of the two offices identified was OIG. The draft noted that OIG had appointed an expert inspector to augment its workforce and that such use of an expert was improper. It also cited the appointment justification, which said the appointment was made "because of our limited ceiling on permanent staffing. . . ."

The final report also noted that 5 of the 15 appointments were inappropriate. However, it did not describe the circumstances that made each of the five appointments inappropriate. Instead, it described the circumstances of only two appointments, neither of which was the OIG appointment. The final report also did not identify any office that made the inappropriate appointments.

A separate section of the draft report revealed that 15 of 31 consulting contracts Department-wide were misclassified by contract specialists and that the misclassifications affected the accuracy of State's reporting

²OIG received an extension from OMB and Congress to submit the report after January 1990.

³As explained earlier, consultants may be hired by appointment as well as by contract. Two of the five improper appointments were for consultants, and three were for experts.

to FPDS. Seven contracts were inaccurately classified as consulting services and should not have been reported to the FPDS (overreported). Eight contracts should have been reported but were not; they were inaccurately classified as nonconsulting contracts (underreported).

This section of the draft did not specifically identify OIG. It said that four of the unreported contracts were for “inspectors to provide direct assistance by inspecting the administration and operation of Foreign Service Posts.” The draft also described what each of the other four unreported contracts were for.

The final report said contracts were incorrectly classified, with seven overreported and eight underreported. For those that should have been reported, the final report described what two of the eight contracts were for. The four “inspector” contracts were among the six not described.

Audit Staff Favored Full Disclosure

According to the audit staff who wrote the phase one report, the AIGA reviewed the draft and directed that all references to OIG be deleted. They said they were opposed to this because they believed that OIG had some problems that would go uncorrected if not reported. And, by disclosing its own problems in the report, OIG would gain credibility in future audits. They were also opposed to deleting the reference because doing so would result in less than full disclosure. They said they discussed their views with the AIGA, who remained firm in his decision to delete references to OIG.

According to the audit staff, the Inspector General was briefed about OIG problems on at least two occasions. According to the staff, one audit staff member informed the Inspector General and other OIG managers in early January 1990 that OIG had appointed at least one expert inappropriately. Audit staff said that during that meeting, one OIG manager responded that all OIG expert appointments mirrored the one in question. During the second briefing held in early February 1990, this same audit staff member discussed with the Inspector General the possibility that OIG contract consultants were being used as government employees.

With respect to the discussion of the four misclassified inspector contracts, an audit staff member said that while the AIGA did not specifically instruct them to delete this, because the AIGA said to delete all references to OIG, the discussion of the four inspector contracts was deleted.

AIGA Believed Reporting of Appointment Issue Premature

The AIGA acknowledged responsibility for deleting references to OIG's expert appointment problem but disagreed with the audit staff's perspective that deleting these references constituted lack of full disclosure. In his opinion, reporting the problem at that time would not have been responsible disclosure because the issue was not yet fully developed. The AIGA said that, although a problem apparently existed at State, it was unclear what exactly the problem was. His concern, he said, was with the whole issue of the propriety of State's appointments, not just with OIG's.

That concern, he said, was heightened by the view of the OIG attorney who informally reviewed the draft. Given the strict time constraints for issuing the report, and his understanding that reporting of management controls over appointments was not specifically required by statute, the AIGA said he decided to defer reporting details of the issue until it could be better developed in the second phase of the review.⁴

The AIGA said it was a management decision to allow two of the five examples of improprieties to remain in the report. He said that had the organizations involved in the two examples complained to him about the report, he probably would have deleted those two examples as well.⁵

The AIGA said he did not direct nor have knowledge about the deletion of the reference to the four inspector contracts. He said he had not noticed that four of the eight unreported contracts involved OIG. As reported earlier, audit staff said no specific instruction had been given to remove this material other than the AIGA's statement that all references to OIG be deleted. The AIGA pointed out that reporting to the FPDS is not an OIG function. Therefore, because OIG was not responsible for the misclassifications, it had no reason to hide them.

The AIGA said he thinks it was inappropriate to have included OIG appointments in the review in the first place because OIG is not an independent reviewer of its own activities. The law, 31 U.S.C. 1114(b), does not explicitly require inspectors general to include their own activities within the scope of their reviews. Including OIG, said the AIGA, goes

⁴State OIG decided that the propriety of State's expert and consultant appointments will not be explored further during the second phase. According to State OIG officials, this is because the work would duplicate this review and another governmentwide review we are doing of expert and consultant appointments that includes the State Department.

⁵The organizations audited were given an opportunity to informally comment on the report.

against government auditing standards.⁶ These standards require auditors to be organizationally independent and to maintain an independent appearance. Furthermore, he said it would be ridiculous for the State Inspector General to make formal recommendations to himself and then track his own compliance.

The AIGA said that, as the review progressed, the State Inspector General was briefed about problems that were being identified. He understood that the Inspector General had instructed an attorney to look into the issues further. Consequently, the AIGA said he did not share the audit staff's concern that unreported problems would go uncorrected and felt he had appropriately carried out his responsibilities.

The OIG attorney who explored the government employee/ independent contractor issue for the Inspector General had informally reviewed the February 9, 1990, draft report. The attorney said she had expressed concerns to the AIGA about the accuracy of the draft's underlying assumptions and about how she thought the draft inaccurately implied a deliberate attempt by OIG to bypass a personnel ceiling at a time when the office was nowhere near reaching the ceiling.

In our June 25, 1990, meeting with her, the attorney said that although she read the draft, she had no recollection whatsoever of the draft's discussion of appointments or underreporting of contracts to FPDS. The problem she understood to exist was with whether consultant contractors were performing inherently governmental duties and had been used as government employees rather than as independent contractors. Previously, in our May 21, 1990, meeting, the attorney said she had been unaware that OIG had a problem with expert appointments until we brought the problem to her attention in late March 1990, nearly 3 weeks after the phase one final report was issued. She said her confusion may have resulted from a general tendency to not fully differentiate between appointees and contractors.

The Inspector General commented on a draft of our report that the attorney's confusion stemmed, not from her own failure, but from the draft phase one report's failure to differentiate between appointees and contractors. In our opinion, the draft phase one report clearly differentiated between discussions concerning appointees and contractors.

⁶The State Inspector General is required under 22 U.S.C. 3929 (c)(1) to comply with audit standards established by the Comptroller General for audits of federal organizations, programs, activities, and functions. These standards are contained in Government Auditing Standards, July 1988.

Conflicting Statements on the Inspector General's Knowledge of Internal Problems

The State Inspector General provided conflicting statements with respect to his awareness of the appointment and contracting problems. During our review, we held discussions with the Inspector General to determine his understanding of the problems and the report omissions. We included his statements in our draft report. However, the Inspector General's comments on our draft expressed a different understanding. Because we must rely on the Inspector General's statements to show his understanding of the problems, we have no means of determining which set of statements is correct and, therefore, present both.

During our September 20, 1990, discussion, the Inspector General said he had never seen any draft of the report but that he and other OIG managers, including the AIGA, were briefed first in early January and again in early February by audit staff on problems identified by the audit. The document the auditors used to brief the Inspector General in February identified a Department-wide problem with appointments and with the misreporting of contract data to the FPDS, but it did not link these problems to OIG. In our September 20, 1990, discussion, the Inspector General said he recalled nothing in either briefing said about either problem.

During the September 20 discussion, the Inspector General said the problem he understood from the briefings was completely different from the omitted information. He said that the problem he understood concerned the State Department's use of contract consultants and whether contract consultants were being used as government employees rather than as independent contractors. He said he was concerned that this could have significant Department-wide ramifications because it affected how the State Department could use and pay consultants. In addition, he said he was told that OIG may share this contracting problem, but the issue as a whole would not be included in the phase one report because the issue was not yet fully developed.

Because of what the Inspector General understood the potential problem to be and its ramifications, he said he had an OIG attorney explore the use of contract consultants further. For his own office, in late February 1990, the Inspector General decided not to renew expiring consultant contracts or to issue new contracts until he could be assured that the problem was resolved. As of early February 1991, existing consulting contracts had expired, and no new contracts had been issued.

In his comments on our draft report, the Inspector General said that he and the attorney had been neither confused nor misinformed. Rather, he

said that his office's attention had been focused on the government employee/independent contractor issue because of its implications for the Department.

Evidence Does Not Indicate Deliberate Concealment

The items pertaining to OIG that were omitted from the phase one final report were (1) the appointment of an expert inspector and (2) the nonreporting of four consulting contracts to the FPDS. Regarding the omission of unreported contracts, it appears to us that this resulted from a misunderstanding between the AIGA and the audit staff.

The issue left in question is whether the omission of the OIG appointment problem was a deliberate attempt to conceal from Congress problems within OIG. The evidence does not point in the direction of concealment. For example, although specific discussion of the OIG appointment was not included in the final report, it was counted in the five improper appointments. Also, the discussion of the OIG appointment was not the only discussion of improper appointments that was omitted. Further, the fact that OIG included itself in the scope of the review, although it was not specifically required to do so by statute, argues against a motive to conceal problems.

We agree with the AIGA's conclusion that the draft lacked full development of the appointment issue. In our opinion, although the audit team correctly concluded that the appointments were improper, the draft did not fully explore the reasons the appointments were improper. For example, the draft conclusion about the OIG appointment was based on OIG's justification for the appointment. That justification said the expert was hired because of the limited ceiling on permanent staffing. However, if it had been fully explored, the auditors would have realized that, as required under Office of Management and Budget (OMB) Circular A-11, expert appointments do count against the ceiling. The draft also did not fully explore those management controls that are the responsibility of the State Department's personnel office—the Bureau of Personnel—to ensure that appointments are proper.

The final report contained recommendations, including one that called for the Bureau of Personnel to review the Department's expert/consultant appointments to see if they were proper. The Bureau did so and determined that a large number was improper. We do not believe the deletions directed by the AIGA fully addressed his concern that the issue was not fully developed. In our opinion, the deletions the AIGA directed, rather than providing resolution, added to the confusion and concern

that surrounded the report. Since the AIGA was uncertain what the problem was and believed more audit work was needed, we believe that the reporting of the entire issue, rather than just a few supporting examples, should either have been deferred until it could be better developed, or the report should have been qualified to indicate the results were preliminary. The AIGA indicated that he had not considered these alternatives but, in retrospect, said he should have deleted the entire issue from the report.

Another problem that we believe contributed to the question of the omissions was confusion between OIG staff and management over whether audit findings related to appointments, contracts, or both. This confusion continued during our discussions with OIG officials.

According to the AIGA, during the summer of 1990 the Inspector General instructed his staff to no longer include OIG activities in the scope of their audits. We agree with the Inspector General's decision. For the sake of maintaining independence, the Inspector General's staff should not audit their own activities. However, OIG expert and consultant activities should not be free of scrutiny. The Secretary of State should designate appropriate persons, outside of OIG, to review OIG's use of experts and consultants.

Conclusions

The overall evidence does not show that OIG deliberately intended to conceal internal problems. Arguing against deliberate concealment are the facts that the total number of appointments reported did not change, references to organizations other than OIG were also omitted, and OIG included its own activities in the review even though it was not required to do so.

On the basis of the evidence that existed, the omissions in the March 1990 final report appear to us to be the result of an error in judgment and poor communication. Deleting examples of improper appointments would not resolve the problem of a less than fully developed appointment issue overall; and there was misunderstanding between the AIGA and audit staff when nonreporting of OIG contracts were deleted from the report. Given the misunderstandings, we can appreciate the audit staff's belief that the omissions were inappropriate. We can also appreciate how such misunderstandings could give rise to perceptions and concerns that OIG was concealing internal problems. The evidence, however, does not suggest to us that the omissions were an attempt to deliberately conceal information.

Although the Inspector General gave different statements concerning when he became aware of appointment problems, we did not change our overall conclusion that the omissions did not appear to have been an attempt to deliberately conceal information for two reasons. First, the AIGA accepted responsibility for the decision to omit discussions of OIG appointment problems. Second, no evidence exists that the Inspector General was involved in the decision to omit the information.

The Inspector General has decided to exclude his own activities when doing future evaluations. While this should preclude the sort of predicament that resulted from the March 1990 omissions, it means that OIG's employment of experts and consultants may go unevaluated. As the following chapters detail, OIG has had problems in making expert appointments and in awarding consulting contracts. The existence of these problems suggests to us that the State OIG's appointments and contracts should not go unscrutinized.

Recommendation to the Secretary of State

We recommend that the Secretary of State, in conjunction with the Inspector General, designate an appropriate group to review annually OIG expert and consultant activities. The results of this review should be provided directly to Congress.

Agency Comments and Our Evaluation

The State Department, in its comments on a draft of this report, did not address the recommendation. (See app. V.)

In commenting on a draft of this report, the State Inspector General agreed with our proposal that an appropriate group within the State Department should evaluate OIG's expert and consultant activities. However, he disagreed with the aspect of our proposed recommendation calling for incorporation of evaluation results into OIG's yearly report to Congress. He said "incorporating" connotes some verification by OIG and would be inconsistent with his decision to eliminate self-assessments from OIG reports. The Inspector General suggested that the recommendation be modified so that results are separately transmitted to Congress. We agree and have modified our recommendation accordingly. (See app. IV.)

Appointments Made Under Expert Appointment Authority Were Questionable

OIG believes it needs experts in Foreign Service matters to help inspect Foreign Service posts. It had been appointing retired Foreign Service officers as such experts. Twenty-four expert appointees, all retired Foreign Service officers, were on staff during fiscal year 1989.

OPM's rules governing the appointment of experts are complex, and those aspects of the rules that address whether a position requires an expert and whether persons qualify as experts involve a great deal of judgment. There is no question that neither State OIG nor the Department's personnel office followed all of OPM's rules in making the 24 OIG expert appointments in fiscal year 1989. Moreover, whether all the duties carried out by the appointees required an expert and whether the appointees were indeed experts are matters of judgment. As this chapter details, we disagreed with State OIG in several instances regarding these issues. It is important to note, however, that OIG could have employed all 24 expert appointees using a different appointment authority, and we have no evidence that any of the 24 expert appointees were not qualified to perform the tasks they were given.

Personnel Lacked Basis to Approve Appointments

The 24 appointees filled the position of "Inspector (Expert-WAE [When Actually Employed])." Before OIG filled the position, the State Department's Bureau of Personnel approved each appointment. It did so using the official position description and other documents submitted by OIG.

Although OIG was responsible for accurately describing the position's duties and responsibilities, OIG officials said the official description was inaccurate.¹ The description said the incumbent serves as an expert inspector "whose counsel we expect to seek from time to time in the training of new inspectors, and in the preparation of materials used in the instructions issued to the inspectors." An OIG official said the individuals filling the position had, for some time, actually done inspections rather than give training advice or develop training materials. Doing inspections was not included in the position description.

The FPM instructed that, when approving an expert appointment, a "high management official" needs to certify that a number of conditions have been met. These conditions include the necessity for the position, whether the position actually requires the services of an expert, and

¹ Federal personnel guidance instructed that the actual duties of each position in an agency be clearly stated in a position description. Personnel officers use the descriptions to determine the level of skill necessary to do the work and the applicable rate of pay for the position.

whether the proposed appointee is a qualified expert. Within the Bureau of Personnel, the Director of Civil Service Personnel Management (CSPM) exercises this certifying authority.

We found that the Director of CSPM routinely signed the certifications even though doing so was clearly not supported by documentation submitted by OIG. In several instances, we did not find certification forms, but the appointments were made anyway.

For most of the 24 appointments, OIG submitted a document justifying the need for the appointment. The justification, which was identical for all the appointments, said

“OIG frequently is called upon to complete on an expeditious basis, special, unscheduled, time consuming evaluations for top management. At times, these must be done without benefit of precedent. Because of our limited ceiling on permanent staffing, we must rely on WAE-Experts who are trained to augment our pool of inspectors and [whose] expertise [is needed] to help meet such high priority requirements, as well as the regular schedule of inspections. It is not always possible to identify appropriately qualified senior officers for OIG tasks on a temporary duty basis, nor is it feasible to try to train unassigned personnel to lead inspection teams for relatively short periods of time.”

The justification, which called for appointees to do scheduled inspections, did not support the position description, which did not call for appointees doing inspections. Instead, the position description said the appointees would train new inspectors and prepare training material.

CSPM has the responsibility to disapprove any action it determines is inappropriate or a violation of laws, rules, or regulations. We believe the clear discrepancy between the position description and the justification should have caused CSPM to explore the issue further; it did not.

The CSPM Director said it was difficult to disapprove actions because when CSPM questions the appropriateness of appointments, affected offices protest that important State Department efforts are being blocked. The Director also said that CSPM was not responsible for determining the correctness of the position description. She said OIG and another unit within the Bureau of Personnel were responsible for this. Regardless, the Foreign Affairs Manual made CSPM responsible for ensuring that all legal and regulatory requirements were satisfied.

Need for Expert Position and Expertise of Appointees Not Always Demonstrated

OIG staff believed that even though the expert position was not accurately described, an expert position did exist, and the Foreign Service retirees who filled it were qualified experts. The FPM defined an expert position as one that, for satisfactory performance, requires the services of an expert in the particular field and consists of duties that cannot be done satisfactorily by someone not an expert in that field. According to the FPM, to be considered an expert a person must possess knowledge and skills clearly superior to those usually held by ordinarily competent persons in that field and is usually regarded as an authority by others in that field.

Among inspectors general, the State Inspector General has the unique responsibility for determining whether Foreign Service posts and bureaus are effectively carrying out the nation's foreign policy and management goals and doing so in a secure environment. According to the Inspector General, this responsibility entails work that inherently requires the services of experts in Foreign Service matters. He said it requires expertise because, if the State Department is to act on OIG recommendations, the people who do inspections must be viewed as credible within the Foreign Service community. The appointees' recognized knowledge and expertise in foreign policy and management bring about this credibility, according to the Inspector General.

In order to determine whether the OIG position required the services of an expert, evidence is needed that shows the duties cannot be performed satisfactorily by an ordinarily competent person. Usually, such evidence would be identified in the position description. Determining whether the OIG position required the services of an expert and what field of expertise is required, however, was difficult because of the lack of an accurate position description. Since the OIG position description was inaccurate, we asked OIG officials and staff to describe the appointees' duties in sufficient detail to demonstrate the need for expertise. On the basis of their descriptions, we made broad determinations about position requirements and about the general knowledge, skills, and abilities required for the position.

Several Positions May Exist and Not All Appear to Require an Expert

To ascertain the 24 appointees' duties, we reviewed position descriptions for OIG's regularly employed inspectors, reviewed OIG's draft mission and function statements, and obtained oral descriptions of the appointees' duties from OIG officials and several inspectors and appointees. On the basis of this evidence, we concluded that, although the 24

appointees were appointed to a single position, the duties described suggested the existence of at least four positions, not all of which appeared to require the services of experts.² On the basis of available evidence, we believe that one position would require expert services and one would not. Information was not sufficient to reach a conclusion about the other two positions.

According to the FPM, expert duties cannot be satisfactorily performed by someone who is not an expert in that field. OIG inspections are normally staffed by experienced Foreign Service officers who are at a relatively high level. For example, in the Office of Inspections, in the beginning of fiscal year 1989, nearly 87 percent of the inspectors were at the FO-1 level (the Foreign Service equivalent to GS-15) or higher. Indeed, it appeared that FO-1 was the working level of this office. We judged a position to require an expert if, in our opinion, the duties required qualifications in excess of those required of regularly employed FO-1 inspectors. (This does not mean that persons at the GS-15 or equivalent level can never be experts. Our opinion refers only to the situation described at State OIG.)

For routine management inspections of foreign posts where appointees were used to augment the level of inspection staffing, we found no evidence to support the need for expertise. However, we recognize that inspections of some posts, such as that of the U.S. embassy in Moscow, require a higher than normal level of skill and, thus, require the services of an expert. We lacked sufficient details about compliance follow-up reviews and security inspections to make a reasonable judgment as to whether these required expert appointments.

Office of Inspections

Eighteen of the 24 appointees were assigned to the Office of Inspections. Three of these 18 were also assigned to other OIG organizations during fiscal year 1989. From organizational information and the oral descriptions of duties, we were able to define two different positions in the Office of Inspections—one for inspections and one for compliance follow-up reviews.

Inspections assess the implementation of foreign policy, resource management (including the performance of the ambassador and other principal officials), and internal controls at foreign posts. Compliance follow-up reviews assess a post's compliance with previous inspection

²The position duties seemed to fall into four categories: routine management inspections, unusually difficult management inspections, compliance follow-up reviews, and security oversight inspections.

recommendations and the quality of the inspection that produced these recommendations.

From what we could discern, only the most complex inspections appeared to require the services of experts. We cannot be more conclusive, however, without more information about the specific duties and responsibilities of the positions. Beyond the oral descriptions, we had no practical means of obtaining information delineating the duties required.

According to the State Inspector General, some inspections in particular require expert services because the country in which a post is located may make it more complex than others to inspect. Thus, some inspections require more knowledge and experience from the inspectors. That complexity may involve substantially different duties, responsibilities, and qualification requirements that OIG has not fully defined. For example, inspections of the U.S. embassy and consulates in the Soviet Union may require a greater degree of knowledge and experience in political, economic, consular, or administrative affairs than inspections of embassies in other countries with smaller staffs and different strategic operations.

Compliance follow-up reviews provide the State Inspector General with an evaluation of the quality of the original inspection and help identify systemic weaknesses in the inspection system. A level of expertise higher than that of the original inspection team might be required to assess the quality of the original inspection. However, following up on the status of implementation of previous OIG recommendations, which is also one of the purposes of compliance follow-up reviews, does not, in our opinion, seem to require expertise higher than that of an ordinarily competent OIG inspector. Thus, it is not clear to us whether or not compliance follow-up reviews require an expert.

According to an OIG official, other less complex inspections needed appointees primarily to accommodate natural fluctuations in workload. Because the need was based more on accommodating staffing gaps than on expertise superior to that of an ordinarily competent Foreign Service officer, we are not convinced that these inspections required the services of an expert.

Office of Security Oversight

In the Office of Security Oversight, according to OIG officials, the appointees' primary purpose was to add balance and credibility to security inspections. Appointees were described generally as retired former ambassadors who helped bridge the gap between technical security

requirements and the diplomatic functions of the posts. The Deputy Assistant Inspector General for Security Oversight said this bridge is necessary because diplomacy cannot be carried out in a fortress, and security specialists may not always fully appreciate that fact.

The retired former ambassadors, according to OIG officials, bring years of broad Foreign Service experience to security inspections, including experience in managing security programs at foreign posts. According to the oral descriptions of duties, their presence raises the level of cooperation an inspection team receives from the post, provides credibility to the team's findings and recommendations, and enhances compliance by the post with the team's recommendations.

Four of the 24 appointees were assigned to the Office of Security Oversight. Two were retired former ambassadors, one was a security specialist, and one was a retired Foreign Service officer with experience in economic matters. We agree that appointees such as former ambassadors bring years of Foreign Service experience to security inspections and may add balance and credibility to the results. However, it is not clear that the duties they perform require the services of an expert or that attainment of the rank of ambassador demonstrates the expertise needed. Our uncertainty exists because only two of the four appointees were former ambassadors. Also, OIG has not defined the specific duties of the position, explained how those duties mandated the appointment of experts, or explained why former ambassadors were needed to meet those requirements. Therefore, we were unable to determine whether the position required the services of an expert.

Other Assignments

Four appointees were assigned during fiscal year 1989 to two other OIG units, the Office of Audits (two appointees) and the Office of Planning and Program Management (two appointees). Because these were not the usual assignments given to expert appointees, we did not attempt to ascertain what the four appointees' duties were and whether those duties required the services of an expert.

Not All Appointees Appeared to Be Experts

According to the FPM, experience and competence in a field are not sufficient by themselves for a person to be considered an expert. An individual's qualifications must be clearly superior to those possessed by ordinarily competent persons in that field to be considered an expert. The FPM sets out broad qualification criteria to judge whether a person's qualifications are clearly superior. It defines an expert as a person who

- has excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field;
- has knowledge and mastery of the principles, practices, problems, methods, and techniques of a field of activity, or of a specialized area in a field, that are clearly superior to those usually possessed by ordinarily competent persons in that activity; and
- is usually regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity.

Agencies should tailor these criteria to the specific expertise required for the specific duties and responsibilities of the expert position to be filled. Generally, a person must satisfy all three criteria to be viewed as having expert qualifications. Expert appointments of individuals who do not possess expert qualifications are inappropriate.

Because the positions' duties and responsibilities were not defined, we were unable to compare any specific agency tailored requirements to an official OIG position. However, within the framework of the three FPM criteria, we identified acts and accomplishments that, in our opinion, would indicate expert qualifications. For example, we identified appointments to the Senior Foreign Service or as an ambassador as an indication of a high degree of attainment.

The acts and accomplishments we identified were applied to the inspection and foreign affairs fields. We used these fields because (1) all 24 appointees were hired into an inspection position and (2) OIG maintained that the expertise needed by the 24 appointees was in foreign affairs. The acts or accomplishments we identified were not all inclusive but were intended to provide a reasonable basis for making judgments on expertise.

OPM reviewed our criteria, and the reviewing official, who authored FPM 304 and provides agencies with advice on expert appointments, said it was good and reasonable. OIG officials reviewed our criteria for judging expertise in foreign affairs and disagreed with the acts and accomplishments we identified for determining whether a person is recognized as an authority by others in the profession. We had included such indicators as authorship of articles or books, teaching assignments in academia, holding offices in associations, and awards given by the U.S. government or foreign governments.

OIG officials believed these indicators of recognition were external to Foreign Service norms and, therefore, faulty measures of expertise. OIG officials said that the most significant indicators of recognition were promotion within the highly competitive Foreign Service, nomination to authoritative positions such as ambassador, and selection to serve on State Department panels and boards.

After considering OIG officials' comments, we added to our list of recognition indicators selection to State Department panels and boards and deleted foreign awards. OIG officials said that receipt of foreign awards is discouraged in principle for conflict-of-interest reasons. We made no other change to our overall list of indicators, which already included an individual's promotion record within the Foreign Service. Although the State Inspector General suggested "nomination to an authoritative position" as an indication of recognition, none of the appointees' official personnel folders documented nominations to an authoritative position, nor did the Inspector General identify nominations in the appointee information he provided. Thus, we did not include nominations in our list of indicators.

We then compared our indicators of expert qualifications to the information in each appointee's official personnel folder and the additional appointee information OIG gave us. On the basis of that comparison, we concluded that

- none of the 24 appointees had expertise in inspections. Although several appointees had limited inspection experience, it was not sufficient under the FPM criteria to qualify them as experts.
- 5 appointees had expertise in foreign affairs, and 14 others did not. For the remaining five appointees, we did not have sufficient information to determine whether they had foreign affairs expertise.

We recognize that all 24 appointees had worked in the Foreign Service and, for that reason, might be viewed as having Foreign Service experience, knowledge, and skill. However, to be an expert under the FPM's definition, an individual's qualifications must clearly be superior to others in that field. This generally was not the case for the 24 appointees. Although we had no reason to believe the appointees were not competent, most did not appear to have had careers that were clearly superior to that of an ordinarily competent Foreign Service officer.

For example, one appointee, before his retirement, had assignments as an OIG inspector, personnel officer, chief of passport or visa services in

two European posts, and had been a consular officer handling passport and visa services at State Department headquarters and at a middle eastern post. This appointee was not a former ambassador or a member of the Senior Foreign Service. In contrast, the career of an appointee that we classified as an expert in foreign affairs included such assignments as Deputy Assistant Secretary of State, a leader of the U.S. Delegation to the Strategic Arms Limitation Talks with the Soviet Union, ambassador to a northern European nation, research professor of diplomacy, and OIG inspector.

OIG No Longer Making Expert Appointments

As reported in chapter 2, OIG, for the March 1990 report, examined a sample of 15 expert appointments from throughout the State Department and concluded that 5 were inappropriate. The report made several recommendations to the Bureau of Personnel, including the recommendation that Personnel review all expert and consultant appointments to determine if duties were appropriately classified as expert or consultant.³ After reviewing 265 expert appointments, CSPM found 109 to be appropriate, terminated 101, and converted 55 to other types of appointments.

At the time of CSPM's review, all but 10 of OIG's expert appointments had expired. CSPM reviewed the position description and the appointment justification for the 10 appointments and concluded that all were inappropriate because the documentation did not support the appointments. Thus, all 10 expert appointments were terminated.⁴ OIG had no expert appointees on its staff as of early February 1991.

According to OIG officials, OIG continues to need the services of retired Foreign Service officers and is using another appointment authority to hire them. The appointment authority used (5 CFR 316.402) permitted agencies to hire employees on a temporary basis and was intended to help them meet their nonpermanent staffing needs. Individuals can be employed under this temporary, limited appointment authority for up to 4 years. The initial appointment is for 1 year or less, and the appointment can be renewed three times in 1-year or less increments.

³Four recommendations were made to the Bureau of Personnel. In response to the other three, CSPM developed instructions revising the standard operating procedures for making expert appointments and provided training sessions on the proper use of expert appointments to its own staff and to administrative staffs in program offices.

⁴The 10 were among the 101 appointments that CSPM terminated.

Unlike the expert appointment authority, which restricted OIG appointees to working no more than 130 days in a year, the temporary appointment authority did not limit the number of days appointees can work. However, a practical limitation remains. Because rehired retirees become government employees again, there is a ceiling on what they can earn in combined salary and retirement pay in any 1 year. Retirees are supposed to stop working when their ceilings are reached, which can be long before a year ends (see next section). If the retiree does not stop working and, thus, receives compensation in excess of the limit, a repayment of the excess is required.

As of early February 1991, 28 retired Foreign Service officers held temporary appointments. Because appointees should stop working when their annuity/salary compensation ceilings are reached, OIG must maintain several appointees in its pool to have the equivalent of one full-time employee.

The retirees hired to date under the temporary appointment authority were placed in two positions.⁵ One position covers the same duties and responsibilities as an OIG grade 14 inspector; the other, the same as a grade 15 inspector. According to an OIG official, on the basis of the results of a review the Bureau of Personnel is doing of the inspection function, more definitive position descriptions will be written to reflect the work that temporary appointees and other inspectors do.

Periodic Reviews and Internal Controls Inadequate

CSPM is supposed to make frequent reviews of the State Department's use of the expert appointment authority. It did so but relied on unverified statements from program offices.

As noted earlier, retired Foreign Service officers have a statutorily imposed ceiling on the total income they can receive each year from the combination of their retirement annuity and appointee pay. We found that 3 of the 24 appointees exceeded their ceilings, and the State Department had no effective system of controls to ensure that ceilings would not be exceeded.

⁵Temporary positions are subject to federal personnel competition rules, which require job openings to be advertised to encourage a pool of potential job candidates. OIG, however, can fill these positions similarly to the expert positions, without competition when employing Foreign Service retirees. Agencies received this authority from 5 CFR 315.606. All of the temporary appointments made through early February 1991 were made without competition.

Reviews and Evaluations Not Thorough

The FPM instructed personnel offices to frequently review the use being made of the expert appointment authority; it suggested quarterly reviews. Regardless of the frequency, the FPM instructed the recurring reviews to ensure that, for example, the duties in the position description were actually being done and the duties being done still required the services of an expert.

The CSPM Director said that, quarterly, CSPM sent program offices the names of their current expert appointees. The program offices provided CSPM with written statements, describing the current status of their experts. These statements, according to the CSPM Director, convinced CSPM that the experts' duties were still being done and required an expert. According to this Director, the office had initially planned to verify program office statements but lacked sufficient staff to do so.

Accordingly, CSPM made no independent reviews to verify the statements. For example, although the position description for the OIG expert position said experts would train inspectors, and OIG's justification for the position said experts were doing inspections, CSPM did not follow up on this discrepancy. Such follow-up across the State Department would have been useful. After reviewing expert appointments in response to OIG's March 1990 final report, CSPM terminated over one-third of the existing appointments.

We believe the State Department could benefit by doing regular personnel management evaluations of the Bureau of Personnel. Such evaluations would identify noncompliance with federal personnel rules and regulations as well as promote good personnel management. Although the State Department has not yet done personnel management evaluations, it plans to do its first evaluation in 1991. However, according to a Bureau of Personnel official, the Bureau of Personnel is not scheduled to be evaluated. On the basis of the problems we observed during our review, we believe a direct evaluation of the Bureau of Personnel, including CSPM, is warranted.

OPM makes personnel management evaluations of Civil Service operations. According to an OPM official, it has not evaluated those operations at the State Department headquarters since at least 1984. This official said OPM plans to return to the State Department in 1991 to do another personnel management evaluation.

Inadequate Controls Over Reemployed Annuitants' Pay

Section 4064 of title 22 of the United States Code limits the total annual compensation of retired Foreign Service officers reemployed by the federal government. During any 1 calendar year, annuitants reemployed on a part-time, intermittent, or temporary basis may generally receive through the combination of annuity and salary as much as either their salary at the time of retirement or the salary of the new position, whichever is greater. The act required that any overpayment made to an annuitant be recovered. (App. II provides more information about the pay limitations on reemployed Foreign Service annuitants and compares them with limitations imposed on reemployed Civil Service annuitants.)

To determine if the pay limit was being adhered to, we reviewed personnel records and analyzed salary and annuity data for the 24 retired Foreign Service officers who worked for OIG in fiscal year 1989. Because the statutory limit is a calendar year rather than a fiscal year limit, we constructed the federal earnings (annuity and post-retirement salary) record for each appointee over the length of calendar year 1989. Five of the 24 appointees did not work for OIG in calendar year 1989 and, thus, had no salary earnings that year. Of the 19 appointees who received salary and annuity payments in calendar year 1989, 3 received payments that exceeded the statutory limit. The excess payments for each totaled \$160, \$442, and \$498, respectively. The remaining 16 appointees received from about \$2,500 to \$48,900 below their limits.

State Department officials in the Office of Compensation and Pensions (in the Bureau of Finance and Management Policy) were unaware that overpayments were made.⁶ The Department had placed on those retirees it rehired most of the practical burden for ensuring compliance with the statutory limit. When Foreign Service officers retire, the State Department asks them to sign a form that explains the annuity/salary compensation limit and their responsibility to report to the State Department any federal reemployment. State Department officials said the form obliges retirees to monitor their federal compensation and makes clear that State will recover any overpayments. Although we agree that the form is useful and necessary and that retirees share responsibility for preventing overpayments, we do not believe it relieved the State Department of its responsibility to ensure that all payments to employees were accurate and allowable. By law, federal agencies are responsible for implementing internal controls to provide reasonable assurance that payments are proper, and overpayments are prevented.

⁶We informed the State Department of the overpayments, and officials there said the appropriate corrective action would be taken to recover the overpayments.

The Office of Compensation and Pensions is responsible for ensuring compliance with the statutory limit. However, it was unable to provide us with consolidated data comparing the reemployed retirees' combined earnings to their compensation limits. The report it used for monitoring purposes did not include annuity data. To do our analysis, we had to obtain data from several divisions within that office and make manual adjustments to arrive at complete and comparable information. That this was necessary indicated further that the State Department does not have an effective internal control system to protect annuitants from earning more and the State Department from paying more than the statute permits.

The Director of the Office of Compensation and Pensions said his office lacks the resources to do the level of monitoring that should be done. He said his office used a computerized pay system that contains all of the payroll and retirement data necessary to monitor compliance; however, the system was not programmed to pull together all of the information necessary for monitoring purposes. The Office of Compensation and Pensions has not requested such programming because officials believed a request would receive insufficient priority to be done.

In our opinion, the Director's statement about the lack of resources argued for an automated monitoring system. Any such system should protect both the annuitant and the State Department. For example, when payments are approaching the statutory limit, the system should automatically generate a letter to the reemployed annuitant and the employing State Department unit telling them of the annuitant's approach to the statutory ceiling. The system should also be programmed so that, after the annuitant is so notified, payments that exceed the annuity/salary compensation limit would automatically be stopped.

Retired Foreign Service officers who become employees of other federal agencies are also subject to the annuity/salary compensation limit. FPM supplement 296-33, figure 8, instructed agencies to notify the State Department's Bureau of Personnel when employing retired Foreign Service officers. The Chief of the Retirement Division, Bureau of Personnel, estimated that about 95 percent of the retired Foreign Service officers who are federally reemployed are reemployed by the State Department. He said that although agencies do generally comply with the FPM supplement, the notification does not provide the State Department with earnings data for the reemployed annuitant.

The Office of Compensation and Pensions was also responsible for ensuring that the annuity/salary compensation limit was applied to Foreign Service retirees employed at other agencies. There was no systematic means of doing this, however; compliance rested primarily with self-policing by retirees.

Currently, the State Department does not have a systematic means of obtaining salary data for Foreign Service annuitants reemployed by agencies outside the State Department. Thus, it is more difficult to monitor total compensation of these individuals than those reemployed within the State Department. A system to monitor compliance with the annuity/salary compensation limit of annuitants reemployed outside the State Department needs to be developed. OPM, as the central oversight agency for Civil Service employment and retirement matters, needs to be involved in the development of such a system.

Conclusions

OIG officials believed OIG needed the services of retired Foreign Service officers to help inspect Foreign Service posts for several reasons, including the need to gain credibility. OIG has hired retired Foreign Service officers by appointing them to a single expert position. However, OIG never accurately described and documented the duties of that position. Even so, it said the duties required the services of experts, and the appointees were experts. Without a complete and accurate description of those duties, we were unable to conclusively determine if OIG was correct. From the information that was available, it appeared that expert appointees worked in at least four different positions during fiscal year 1989 and not all the positions required the services of experts. It also appeared that, on the basis of the FPM definition, only 5 of the 24 appointees were qualified to be appointed as experts.

The questions of whether expert positions existed and whether the appointees were experts have become somewhat moot now that OIG is only appointing retirees to temporary positions. However, like the expert position that OIG appointed persons to, the exact duties of the retirees in temporary positions have not been fully described. OIG plans to eventually develop a more definitive position description or descriptions.

Although it is a "service" organization to the State Department, the Bureau of Personnel was supposed to make certain that personnel appointments were proper. It did not do so for the expert appointments

we reviewed. The Bureau of Personnel approved OIG's expert appointments, even though grounds for doing so were clearly inadequate; it never developed tailored criteria to judge whether expert appointees qualified as experts; and it did not verify program office statements that expert appointments were still valid. Personnel recently created an organization to do personnel management evaluations of Civil Service and Foreign Service personnel operations throughout the State Department. Although Personnel does not plan to subject itself to a similar evaluation, these evaluations would indirectly reflect upon how well Personnel carried out its duties. We believe this new organization should do direct and regular evaluations of the Bureau of Personnel. We believe the operations of the Bureau of Personnel also should be evaluated by OPM.

Retired Foreign Service officers who are reemployed as federal employees are limited by statute as to how much they can earn annually from their combined federal salary and annuity. The State Department had no effective system for ensuring that the annuitants it rehired were not paid more than the statute permitted. We believe the State Department should develop such a system in order to protect annuitants from working more than they should and the government from paying more than what is allowed. We also believe that the State Department and OPM should work together to develop an effective system to monitor payments made to Foreign Service annuitants reemployed by other federal agencies.

Recommendation to the State Inspector General

We recommend that the Inspector General ensure that all OIG positions are fully and accurately described in official position statements.

Recommendations to the Secretary of State

We recommend that the Secretary of State

- ensure that periodic personnel management evaluations are made of the Bureau of Personnel,
- direct responsible offices to develop an effective system to ensure that the statutory limit on compensation received by retired Foreign Service officers reappointed by the State Department is followed, and

- direct appropriate officials to work with OPM to establish an effective system for monitoring payments made to Foreign Service annuitants reemployed by other federal agencies.

Recommendations to the Director of OPM

We recommend that the Director of OPM

- ensure that a comprehensive personnel management evaluation of the State Department's Bureau of Personnel be done as scheduled in 1991 and
- work with the State Department to establish an effective system for monitoring payments made to Foreign Service annuitants rehired by federal agencies other than the State Department.

Agency Comments and Our Evaluation

In commenting on a draft of this report, the State Inspector General agreed with and accepted our recommendation to fully and accurately describe OIG position descriptions. However, he took strong exception to our analysis of whether the positions required the use of experts and whether the persons who filled those positions were experts. He termed our analysis speculative, which he said was illustrated by the many examples of qualified findings. (See app. IV.)

We agree that the analysis produced qualified findings and required interpretations of FPM guidance. But our results were qualified because our analysis was based on available but summarized descriptions of position duties and the knowledge, skills, and abilities necessary to carry out those duties. We used these summarized descriptions because OIG had not accurately defined the position's duties, and the State Department had not specified what knowledge, skills, and abilities were necessary to carry out those duties. Moreover, the analysis was done by two experienced personnel specialists, and the conclusions reached were based on the information that was contained in the official personnel folders that were available at the Department's Bureau of Personnel. In addition, the duties of the positions evaluated were those that were described to us by OIG managers and inspectors. The criteria we developed to judge each appointee's expertise were reviewed by the OPM official who wrote the FPM guidance on appointing experts, and he found the criteria reasonable. Finally, before we drew our conclusions, we incorporated changes, as appropriate, that OIG suggested.

The Inspector General said it was particularly difficult to understand why we had gone to such lengths to address the expert issue when we

all agree that OIG was clearly authorized to obtain the services of retired Foreign Service officers under another appointment authority. We addressed the expert issue because the Subcommittee asked us to.

We agree with the Inspector General that the same persons hired under the expert appointment authority could have been hired under another, nonexpert, appointment authority as is now being done. However, the appointees were hired under the expert appointment authority, and, thus, the rules for that authority's use applied.

Finally, the Inspector General requested that we withdraw our proposed recommendation for the Secretary of State to remind managers of Foreign Service posts to cooperate with OIG inspectors. The Inspector General said the recommendation was unnecessary because the State Department already provides full cooperation. According to the Inspector General, our premise for the recommendation was inaccurate. He said OIG uses retired former ambassadors and other retired Senior Foreign Service officers not to secure cooperation per se, but because the inspections often challenge perceived foreign policy priorities and, thus, require the expertise of seasoned Foreign Service officers.

We proposed the recommendation because in various interviews with inspectors, including former ambassadors, we were told that cooperation was enhanced when regularly employed inspectors were accompanied by former ambassadors. However, if the Inspector General believes full cooperation is already received, there is no need for our proposed recommendation. Accordingly, we have withdrawn it.

The State Department did not comment specifically on our recommendations but did cite corrective actions recently taken that address some of the issues we raised. For example, the Bureau of Personnel reviewed all of the Department's 265 expert and consultant appointments and terminated 101. All of OIG's 10 expert appointments in effect at the time of Personnel's review were among the appointments terminated. No corrective actions were cited regarding our recommendations concerning compensation to Foreign Service annuitants reemployed at the State Department or other federal agencies. Appendix V contains the State Department's comments and our evaluation.

In her comments on our recommendations for a comprehensive personnel management evaluation of State's Bureau of Personnel, the OPM Director said OPM would do a personnel management evaluation of the State Department as planned in 1991. The Director said the review will

cover, among other things, areas of personnel management requiring attention, as revealed by an analysis of supervisory and managerial questionnaire results. She also offered potential solutions to the problem of monitoring payments made to Foreign Service annuitants rehired by federal agencies other than the State Department. For example, she suggested the computer data contained in OPM's Central Personnel Data Files could be matched against the annuity rolls of the State Department's Foreign Service Retirement System. (See app. VI.)

Problems in Consulting Contract Awards

The Inspector General Act of 1978 gave inspectors general broad authority to enter into contracts. The State Inspector General used that authority to award three consulting contracts in fiscal year 1989. State Department's Office of Acquisitions awarded another nine consulting contracts that year on behalf of OIG. All 12 contracts were awarded without competition. Most were for assistance in doing inspections.¹

All 12 contracts were awarded improperly. For example, statutory and regulatory requirements for promoting competition were not followed and there was inadequate justification for awarding the contracts without competition. Also, because contractors were used in a manner similar to appointees, the contracts, setting up retirees as independent contractors, appear to be inappropriate. Moreover, contracts to bypass or undermine pay limitations violate policy in federal contracting regulations.

In recognition of possible problems, the Inspector General suspended further procurement of consulting services in March 1990. That suspension was still in effect as of early February 1991.

Contract Award Process Deficient

The Competition in Contracting Act (CICA) of 1984 and implementing regulations, the FAR, required that contracts, with certain exceptions, be awarded on the basis of full and open competition. That is, all responsible sources must be permitted to compete for the government's business. CICA and the FAR cited seven exceptions to this requirement, and agencies must fully justify in writing why an exception is being used. However, even when other than full and open competition is justified, agencies must still solicit offers from as many sources as practicable under the circumstances.

Justifications Inadequate for Awarding Sole-Source Contracts

The following two exceptions to full and open competition were most often referred to by the 12 OIG contracts:

- The agency's need is of such unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources solicited.

¹Nine consultants were hired to do inspections; one consultant was hired as a security and munitions control expert; one consultant was hired to lead compliance follow-up reviews; and one consultant was hired to provide secretarial assistance to inspectors.

- Supplies or services are available from only one source, and no other type of supplies or services will satisfy the needs of the agency.

When these two exceptions are used, they must be justified in writing through a “Justification for Other than Full and Open Competition.” The FAR required that each justification contain sufficient facts and rationale to support the exception. It must also contain other specified information, such as a description of the efforts made to ensure that offers are solicited from as many potential sources as practicable.

The 12 OIG contracts either did not cite a FAR exception, did not include a written justification for the exception, or did not provide an adequate justification for the exception.

Cited Exception for Three Contracts Not in CICA or the FAR

The three sole-source contracts issued directly by OIG were justified on the basis that sole sourcing was the most efficient and effective way to meet work requirements. This basis was unacceptable because it is not among the exceptions cited in CICA and the FAR. Only those exceptions specifically stated are permissible to justify less than full and open competition.

No Justification Found for Two Contracts

The contract files did not contain written justifications for two of the nine contracts awarded by the Office of Acquisitions, as required by the FAR. In commenting on a draft of this report, the State Department said that justifications had been prepared but could not be located. However, State’s inability to provide us with such required documentation leaves us with no basis upon which we can support the decision to award contracts noncompetitively.

Unusual and Compelling Urgency Not Justified for Six Sole-Source Contracts

The remaining seven contracts awarded by the Office of Acquisitions were all sole-sourced based on the exception of unusual and compelling urgency. This exception was justified by Acquisitions on the basis of the “unique qualifications necessary to meet the responsibilities detailed for the inspectors.” In other words, the unusual and compelling urgency was based on the belief that only one source was available that could do the job. This is one of the seven exceptions to full and open competition.

One of the seven contracts was for less than \$25,000. Part 13 of the FAR relaxes competition and justification requirements for contracts of \$25,000 or less, which are called small purchases. To limit solicitations to one source on a small purchase, the contracting officer need only determine that only one source is reasonably available.

The justifications for the six contracts over \$25,000 did not specify what qualifications would make the individuals unique. Furthermore, the statements of work for the six contracts were identical. In our opinion, six individuals all qualified to do the same work suggests that competition was possible. Thus, sole-sourcing each contract on the basis that only one source was available was an inappropriate justification.

The contracting officer responsible for six of the seven contracts acknowledged the possibility that the justifications might not have been properly prepared. He said his workload at the time prevented him from doing the level of review he would have liked.² The Director of Acquisitions said that this contracting officer's workload had been unusually large during the time the six contracts were awarded in late September 1988.

OIG prepared the justifications. Under the FAR, contracting officers are to prepare justifications for other than full and open competition. As reported earlier, OIG officials said they lacked the expertise necessary to prepare contract documents in conformity with federal procurement regulations. Why OIG prepared the justifications is unclear.

In our June 1990 discussion with him, the contracting officer stood by his decision to sole-source the contracts for unusual and compelling urgency. He felt the circumstances were urgent because, among other reasons, OIG's mission was pressing and important enough to compel the hiring of contractors as soon as possible.

Although we agree that OIG's mission was pressing and important, we believe the urgency resulted from inadequate planning on OIG's part. According to OIG officials, discussions on the need to contract were held in the summer of 1988. However, according to the procurement analyst who assisted the contracting officer, the Office of Acquisitions did not receive the documentation needed to initiate the procurement process until early September 1988, about 3 weeks before the date services were to begin. The analyst estimated that normally Acquisitions requires initiating documentation about 2 to 3 months in advance of the required award date in order to award contracts competitively. In our opinion, OIG demonstrated a lack of advance planning by providing only 3 weeks to

²When we spoke with the contracting officer, he was stationed at an overseas office and did not have a copy of the OIG contract files. Almost 2 years had passed since the contracts were awarded, and the contracting officer could not recall all of the details about the contracts.

award the contracts. CICA and the FAR specifically disallowed the lack of advance planning as a reason for sole-source contracting.

Requirements to Promote Competition Not Followed in Awarding the 12 Contracts

OIG and the Office of Acquisitions awarded the 12 contracts without adequately meeting regulatory requirements aimed at promoting competition and protecting the government's and contractors' interests.

Certification Lacking or Questionable for Eight Contracts

Generally, the FAR prohibited agencies from awarding sole-source contracts until contracting officers certified that the sole-source justification was accurate and complete. This requirement was not levied on contracts for \$25,000 or less. Four of the 12 contracts were for \$25,000 or less. One of the 8 contracts over \$25,000 lacked the required justification and, consequently, certification.³ Even so, the Office of Acquisitions still awarded the contract.

The remaining seven contracts included justifications to sole-source. However, each justification was missing at least half of the required information.⁴ None, for example, described efforts made to ensure that offers were solicited from as many potential sources as practical. The remaining contract had no justification but was awarded anyway. Nevertheless, all seven of the justifications were certified as complete.

Required Approval Usually Missing

Generally, the FAR required sole-source justifications for contracts over \$25,000 to be approved by certain officials in addition to contracting officers. Eight of the 12 contracts met the dollar threshold for additional approval. Four contracts were for less than \$25,000.

The FAR required that justifications of contracts between \$25,000 and \$100,000 be approved in writing by an official above the level of the contracting officer. Seven contracts came under this category. Of those, two included the additional approval, and five contained no signature demonstrating approval beyond that of the contracting officer.

The FAR required that justification of contracts between \$100,000 and \$1 million be approved by a "competition advocate," whose job primarily is

³The three contracts processed and awarded by OIG did not contain separate documents, as required, justifying the basis for sole-sourcing the contracts. However, the contract files did include an explanation of OIG's rationale for doing so. We considered these explanations as OIG's justifications.

⁴Appendix III lists the information required by the FAR to be included in these justifications.

to promote competition. One contract came under this requirement, but the signature indicating approval from the Department's competition advocate was not obtained.

Contracts Awarded to Government Employees

To avoid conflicts of interest and the appearance of favoritism, the FAR provided that, generally, contracting officers shall not knowingly enter into contracts with government employees. The Office of Acquisitions awarded 2 of the 12 contracts to Foreign Service retirees who were government employees at the time of the award. Both were working for OIG as expert appointees (see ch. 3). Office of Acquisitions and OIG officials said the awards should not have been made.

The contract period overlapped the appointment period by 1 year in one case and by about 1 1/2 months in the second case. In each case, the general scope of the work to be performed under contract and during the appointment was the same—help carry out inspections. Because of the overlap in time and scope, we asked OIG to determine whether double payments were made for the same work. OIG said no double payments were made.

Options to Renew Inappropriate

Seven of the nine contracts awarded by the Office of Acquisitions contained options to renew at OIG's discretion; the three contracts issued by OIG contained no such options. The options could extend the contracts up to 4 years beyond their original 1-year terms. Since the original contract periods were inadequately justified, we believe the options were also inappropriate.

The FAR allows options to be exercised without new justifications being written. This means that OIG's original justification for the sole-sourced contracts would need to continue to support the need to exercise the option. Six of the seven Acquisitions contracts were sole-sourced on the basis of unusual and compelling urgency, and one contract contained no justification supporting the sole-source award. When the justification of unusual and compelling urgency is used, agencies are required by the FAR to demonstrate that the government would be seriously injured unless the agency is permitted to limit the number of sources solicited. We believe that asserting that conditions requiring sole-source will remain of unusual and compelling urgency for up to 5 years was unreasonable and doubt that OIG could meet the FAR requirement to demonstrate serious injury.

The options were written by OIG and approved by the Office of Acquisitions. The contracting officer who approved the options said that at the

time the contracts were written the Office of Acquisitions was still learning the requirements of the then relatively new CICA.⁵ He said he has since learned through experience that options to renew should not be attached to contracts that are sole-sourced for unusual and compelling urgency. On the other hand, the former OIG official who prepared the options said they represented a “wise” attempt to streamline the procurement process in recognition of the difficulty in staffing OIG inspections.

OIG officials said that for fiscal year 1990 the contracts were opened to competition, and no responsive proposals were received. As a result, OIG exercised options on six of the seven contracts. The options were exercised twice for a total of 7 additional months.

We do not agree that the seven contracts were opened to competition. Contract requirements were published in the Commerce Business Daily. However, rather than inviting competition, the notice informed the public about OIG’s intent to exercise options. The notice was entitled “Notice of Intent to Exercise Options” and said “No Request for Proposals will be issued as a result of this notice” and “No telephone questions or comments will be accepted.” Regardless of whether efforts were made to compete the contracts in fiscal year 1990, we believe, for the reasons already cited, that attaching the options in the first place demonstrated improper contracting practices.

OIG-Prepared Contracts Lacked Important Clauses

The three contracts awarded directly by OIG did not conform with the Uniform Contract Format required by the FAR. Necessary legal clauses and provisions to protect the rights and interests of both the government and contractors were missing from these contracts. For example, the contracts did not include a “termination for convenience” clause to allow OIG to terminate the contracts if, for example, the requirement for work ended. They also did not include a “changes” clause prescribing conditions by which OIG could make changes to the contracts.

OIG officials said their office lacked the technical expertise to prepare contracts in accordance with the FAR. OIG’s Chief Counsel said he recalled that a decision had been made to use the State Department’s services rather than develop within OIG the expertise necessary to appropriately award contracts. However, the Inspector General directed his staff to prepare and award the three contracts. In our June 19, 1990, discussion with him, the Inspector General said he was unable to recall why he had

⁵CICA was passed in 1984, and the contracts were awarded in 1988.

done so. However, in comments on a draft of this report, the Inspector General said it was because OIG's need was more immediate than could be accommodated by the Office of Acquisitions. The three consultants were hired to provide inspection assistance, security and munitions control expertise, and secretarial assistance.

Regarding the three contracts, the Inspector General's delegation of authority to the contracting officer for awarding the contracts was unclear. For each contract, the Inspector General wrote to an OIG official and said he was not yet formally delegating his contracting authority but would like the official to be the contracting officer. The contracts were then signed by this official as the contracting officer and by the Inspector General as the approving official. The contracting officer's accountability was weakened, we believe, when the delegation of contracting authority was unclear. That kind of situation confuses who exactly is responsible for ensuring compliance with contract terms and safeguarding the government's interests. Under the FAR, contracting officers have the authority to enter into, administer, and terminate contracts and are responsible for doing so in compliance with laws and regulations. Moreover, the FAR calls for appointing officials to consider the complexity and dollar value of the acquisitions to be assigned as well as the candidate's experience, education, and knowledge of procurement in selecting contracting officers. The manner in which the three OIG contracts were written did not suggest that these factors were duly considered in selecting OIG contracting officers.

One OIG-Prepared Contract Not Reported to FPDS as Required

OMB Circular A-120 provided guidance on the use of consulting services and requires agencies to report to the FPDS data on consulting contracts in excess of \$25,000.⁶ Of the three contracts awarded directly by OIG, one was for over \$25,000 but was not reported to FPDS as required by the circular. Data from all contracts awarded in the State Department were consolidated in the Office of the Procurement Executive, which then forwarded the data to FPDS. According to the procurement analyst responsible for collecting FPDS data, no contracting information has ever been received from OIG for contracts awarded on the basis of the State Inspector General's own authority. Thus, none of the 1989 consulting contracts were reported to FPDS. The lack of reporting is particularly difficult to understand given that, as discussed in chapter 2, the Inspector

⁶The FPDS collects and disseminates information on consulting service contractual arrangements within the executive branch. One function of FPDS is to help agencies acquire consulting services, monitor performance, and evaluate results.

General is required to do a yearly audit of the accuracy and completeness of consulting contract information the State Department provides to the FPDS. In our opinion, the lack of reporting further demonstrated that OIG lacked the skills and experience necessary to contract properly and suggested it should not attempt to contract on its own without first developing such skills and experience.

Office of Acquisitions Is Making Changes to Improve Contract Award Process

The Office of Acquisitions has recognized problems in its contracting process and has taken measures to ensure that internal controls are followed. For example, in July 1990 Acquisitions issued a new Operational Procedures Manual. One of the features of this manual was a standardized justification format, and each paragraph in the format was referenced to an element in the FAR. This format allows the contracting officer to quickly review a justification to ensure that it is consistent with FAR requirements.

To reinforce the new manual, Acquisitions started a bimonthly newsletter to, among other things, help program officers understand their responsibility in the procurement process. Each issue will highlight specific aspects of the procurement procedure. The first newsletter, issued in June 1990, highlighted contract justifications. It discussed, for example, circumstances permitting other than full and open competition, contract office versus program office responsibilities, and the format that all justifications must follow.

The Office of Acquisitions planned to have operational during fiscal year 1991 a computerized management information system that would automatically prepare contracts. The system was also designed to track workloads for Acquisitions.

The Office of Acquisitions anticipated that further refinements to the acquisition process will result from a study due in April 1991 from the Logistics Management Institute. The Institute, a private organization, was studying the relationship between the Office of Acquisitions and customer program offices and the roles and responsibilities of each.

If OIG wishes to contract for consultant services in the future, in addition to advertising in the Commerce Business Daily, it may be helpful to advertise for qualified Foreign Service retirees in newsletters and magazines published by Foreign Service organizations, such as the Foreign Service Journal, which is received by members of the American Foreign Service Association. Retirees may be more likely to spot OIG's

advertisements in such publications as opposed to the Commerce Business Daily. If so, competition for contracts may increase. In commenting on a draft of this report, the Inspector General said, if he resumes contracting for professional services, he would ensure that solicitations are advertised in other publications more likely to be seen by potential bidders.

Contracts Appear to Have Been Inappropriate Vehicles to Obtain Services

OIG hired retired Foreign Service officers in two ways: appointment and independent contractor. Different restrictions applied to each. However, the circumstances that caused OIG to contract made it an inappropriate vehicle by which to obtain those services.

If hired as an appointee, a retiree is considered a reemployed annuitant. As discussed in chapter 3, Foreign Service annuitants reemployed on a part-time, intermittent, or temporary basis by the federal government face an annual limit on the total amount of compensation they can receive from the federal government. OIG officials estimated that the limit is typically reached about 3 to 6 months after appointees begin work. The limitation, in effect, restricts the number of days the reemployed annuitants can work.⁷

If hired as an independent contractor, the annuity/salary compensation limit does not apply. Therefore, the retiree can work and earn compensation throughout an entire year. The legal test for determining whether a service contract creates an employer-employee or independent contractor relationship hinges on the level of supervision and control exercised by the government over the contractor. The greater the degree of supervision and control, the greater the likelihood that an employer-employee relationship is created. Guidelines have been established in the FPM, the Foreign Affairs Manual (FAM), the FAR, and by the Internal Revenue Service (IRS) to determine whether a contract creates an independent contractor or an employer-employee relationship.⁸ In essence, an agency must treat the contractor as it treats its regular employees and apply annuity and compensation limitations if an employer-employee relationship is created. (See 53 Comp. Gen. 542 (1974).)

⁷Because OIG appointees were serving under expert appointments for intermittent services, they were also subject to a 130 work day limitation, as discussed in chapter 1. See pages 54 and 55.

⁸See FPM, chapter 304; 3 FAM 1514; FAR, part 37; and IRS Rev. Rul. 87-41, 1987-1, C.B. 296.

According to OIG officials' statements made during our fieldwork, the decision of whether to have retirees work under appointment or contract was based on whether the retirees' experiences were specific enough to be needed on a limited basis or over an entire year. Officials explained that, generally, those retirees whose experiences were expected to be needed all year were asked to work under contract, and those whose experiences were expected to be needed on a more limited basis were appointed. In other words, according to OIG officials, when the services of retired Foreign Service officers were needed for periods longer than the annuity/salary compensation would effectively permit, they were hired by contract rather than reappointed as government employees. Ten of the 12 contracts were awarded to annuitants subject to the compensation limit.⁹

Contract Prices Based on Comparable Services

Contracting officers are responsible for establishing a fair and reasonable price for contracts. This can be done in a number of ways. In the State Department, when contracts are for consulting services, the price can be established based on an advisory opinion provided by the Bureau of Personnel. For 7 of the 12 consulting contracts, the Bureau of Personnel classified the work as falling within the GS-11 to GS-13 range (or \$111 to \$205 per day in January 1989). The Bureau's opinion was based on a description of work included with each proposed contract; six of the seven statements indicated that inspection work would be done. One statement indicated that compliance follow-up reviews would be done. We do not know if the Bureau of Personnel provided an advisory opinion for the two other contracts awarded by the Office of Acquisitions or the three contracts awarded directly by the OIG. We found no evidence to indicate that it did.

The contracting officer chose not to use the Bureau's advisory opinions. Instead, he established prices using the rate of pay earned by expert appointees. The appointees were viewed as providing inspection services comparable to what contractors would provide. As such, this also was an acceptable means of establishing price. The rate used was generally GS-15, step 10, which was valued at about \$273 per day in September 1988. This price was established for 9 of the 12 contracts. About 87 percent of OIG inspectors were paid at the GS-15 pay level or higher during fiscal 1989.

⁹Two of the 12 contractors were not drawing an annuity.

With respect to the three contracts priced differently, it appears that one contract's price was established on the basis of previous salary earned. The contract files for the remaining two contained no explanation as to why the salaries established were fair and reasonable. The files should contain such an explanation.

According to computerized data provided by the Office of Financial Operations in the Bureau of Finance and Management Policy, OIG spent about \$405,000 for contract consulting services in fiscal year 1989. We attempted to verify the data by reviewing the Office of Financial Operations' contract voucher files. However, we were unable to verify the data because the voucher files were incomplete. For example, one file was empty despite computerized data showing that payments were made. Thus, payments made on contracts were not properly supported in the files.

From the information we gathered, we are unclear as to how much supervision and control OIG exercised over these contractors. However, it appears that an employer-employee relationship may have been created. OIG officials told us that contractors were used in a manner similar to appointed experts and regularly employed inspectors who were government employees. They said the inspectors' work assignments were based on their previous work experience and knowledge rather than on whether they were hired by contract or appointment. Although, according to OIG officials, the nature of work was such that all inspectors—whether appointed or hired by contract—worked somewhat independently and without a great degree of supervision and control, it is not clear from the information we gathered whether any distinctions in the nature of working relationships justified a determination that those hired by contract truly worked as independent contractors.

Therefore because the contractors were used in a manner similar to appointees, the contracts appear to have been inappropriate vehicles under which to obtain retirees' services. Moreover, a contract for advisory and assistance services that includes individual consultant services contracts entered into to undermine and bypass pay limitations violates policy set out in Part 37 of the FAR. The Assistant Inspector General for Inspections indicated that he was unaware of any prohibition against contracting under these circumstances. In commenting on a draft of this report, the Inspector General took issue with our position (see pp. 54 and 55).

State Inspector General Suspended Use of Contracts

In March 1990, the Inspector General decided to suspend all further procurement of consulting services.¹⁰ Although the exact nature of the problems was unclear at that time, he ordered a halt to such procurement to avoid (1) the possibility of violating contracting regulations and (2) the appearance of wrongdoing. The Inspector General has not ruled out using consulting contracts again in the future. However, he said that before any such contracting is done again, he wants to make sure that all appropriate procedures will be followed. As of early February 1991, OIG had no contracts for consulting services, and the suspension was still in effect.

Conclusions

OIG and the Office of Acquisitions did a poor job of following procurement laws and regulations in awarding the 12 consulting contracts. OIG lacked the expertise to award contracts but awarded three contracts anyway. The Office of Acquisitions should have had the expertise but did not apply it, apparently due in some measure to workload pressure. Should OIG return to acquiring consulting services by contract, we believe it should refrain from awarding contracts itself until it builds the expertise in-house to do so. Until then, we believe the Office of Acquisitions should award OIG contracts. Although the Office of Acquisitions has taken steps to improve its operations, it needs to follow internal controls established for ensuring statutory and regulatory compliance. The Office of Financial Operations also needs to improve internal controls to ensure contract payments are properly supported.

By contracting, OIG bypassed the annuity/salary compensation limitation. OIG believed it needed the services of retired Foreign Service officers and that the need would last longer than the period of time the limitation usually permitted appointees to be compensated for. Although we understand OIG's dilemma, it must ensure that those hired by contract truly work as independent contractors.

Recommendation to the State Inspector General

We recommend that the Inspector General refrain from awarding consulting contracts directly until contract expertise is developed and available within OIG. Until that time, OIG should use the services of the Office of Acquisitions.

¹⁰In January 1990, OIG auditors informed the Inspector General of possible contracting problems. The auditors became aware of the possible problems during the review discussed in chapter 2.

Recommendations to the Secretary of State

We recommend that the Secretary of State

- follow up to ensure the actions taken by the Office of Acquisitions to improve contracting correct the problems we identified and
- direct the Office of Financial Operations to improve documentation of contract vouchers to ensure complete and proper support for payments made.

Agency Comments and Our Evaluation

The Inspector General said he agreed with the recommendation that OIG refrain from awarding contracts directly until expertise is developed and to use the Office of Acquisitions in the meantime if contracts must be awarded. He added, however, that OIG utterly rejects the assertion that the contract mechanism was chosen to bypass the annuity/salary compensation cap. He said use of contracts depended on whether the experiences of the Foreign Service retirees were specific enough to be needed over an entire year. He explained that retirees hired by appointment were limited to working no more than 130 days in a year, and when retirees' experiences were needed for longer than 130 days, contracts were awarded. This 130-day work limitation imposed on experts working under an intermittent appointment exists in addition to the annuity/salary compensation limit imposed on reemployed annuitants.

Our concern on the use of contracts as an appropriate vehicle stems from the similarity in work between contractors and appointees, as well as from statements made by OIG officials on the reasons for choosing to contract. We were told on two separate occasions, once by the Assistant Inspector General for Inspections and the other time by his deputy, that the time restrictions that result from the annuity/salary compensation limit was the determining factor in deciding whether to hire by appointment or contract. Moreover, 7 of the 12 contractors were paid for fewer than 130 days, thus suggesting the 130-day limitation often may not have been a relevant factor. We modified the report to more clearly delineate our basis for questioning the appropriateness of the OIG's use of contracts.

Other avenues existed for hiring these consultants, such as the temporary authority now being used, or the reinstatement authority, which would have allowed OIG to bypass the 130-day work limitation without having to contract. However, in using other personnel appointment authorities, the annuity/salary compensation limit would still have applied and continued to limit the number of days appointees could work. Only by contracting could this limitation be avoided. However, OIG

must ensure that those hired by contract truly work as independent contractors. OIG officials told us that contractors were used in a manner similar to appointees and thus, it appears that the contracts were inappropriate vehicles under which to obtain services.

The State Department did not respond specifically to our recommendations. Its comments and our evaluation are in appendix V.

Evaluation of Expert Appointees' Qualifications

The Federal Personnel Manual (FPM), at section 1-2(3) of chapter 304, established the criteria for determining whether a person is considered an expert for purposes of appointment in the federal government. To determine expertise, an individual's qualifications must be compared to the FPM criteria.

The criteria consist of three parts, all of which generally must be met. The person must

- have excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field;
- have knowledge and mastery of the principles, practices, problems, methods, and techniques of a field of activity, or of a specialized area in a field, that are clearly superior to those usually possessed by ordinarily competent persons in that activity; and
- usually be regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity.

When an individual meets all three of these criteria, the individual is considered an expert.

Although not required, it is good management practice for agencies to tailor the FPM criteria to specific job requirements. Because the State Department has not tailored the criteria, we did so.

We decided that the following representative acts or accomplishments are indicators of whether an individual appointed as a State Department Office of Inspector General (OIG) inspector meets the FPM criteria as an expert.

- Excellent qualifications and a high degree of attainment

To receive credit in this category an appointee had to be credited under both excellent qualifications and a high degree of attainment. All appointees were credited with excellent qualifications on the basis of our recognition of the "up-or-out" nature of the Foreign Service. Because nearly 60 percent of the OIG inspectors were at the GS-15 or FO-1 (the foreign service equivalent to GS-15) level, we judged FO-1 as the "ordinarily competent" level. Credit for a high degree of attainment was given for those exceeding this level, that is, if the appointee was a member of the Senior Foreign Service or had served as an Ambassador. This does not mean that an FO-1 Foreign Service officer could never be

considered an expert. However, in this situation, persons below the Senior Foreign Service or Ambassadorial levels did not appear to us to meet the OPM criterion of exceeding the ordinarily competent level.

- Mastery in a field that is clearly superior to ordinarily competent persons

Each appointee's career assignments were reviewed. Careers that showed a steady and significant increase in complexity of assignment and level of responsibility were given credit. Also, careers that showed a lesser increase in complexity and responsibility but demonstrated broad experience or a variety of dissimilar assignments received credit. Careers that were not of this level were not given credit.

- An authority or has unusual competence as recognized by others in the profession

Authority in the field was demonstrated by authorship of articles or books; the presentation of lectures; and/or teaching assignments in academia, at the Foreign Service Institute, or at other State Department organizations. Serving on State Department boards or panels was credited because it indicates peer recognition. Offices held in associations or groups were counted for the same reason. U.S. government awards were also counted.

Although the acts or accomplishments we identified were not all inclusive, we believe they represented a reasonable basis for making decisions on expertise. We provided our criteria to the Office of Personnel Management (OPM) official who authored FPM 304; he agreed they were good and reasonable. Because OIG maintained that the expertise it needed was in foreign affairs, we applied our criteria to that field.

The documentation contained in each appointee's official personnel folder is what State's Bureau of Personnel had available to it when it approved and made the appointments. This documentation was not complete in some cases. Our decisions on expertise were based on the information in the folders as well as on additional information provided by OIG.

We used experienced personnel specialists to compare the specific activities described above to the documents contained in the official personnel folders (especially any SF-171s—Application for Federal Employment, resumes, or other documents indicating credentials or

accomplishments) and to the additional information provided by OIG. The comparisons resulted in our determination of expertise for each appointee.

Comparison of Compensation Limits Between Civil Service Annuitants and Foreign Service Annuitants

In addition to their primary request, the Subcommittee asked that we include in this report a brief explanation of the differences between compensation limits imposed on reemployed annuitants of the Civil Service versus those of the Foreign Service. Although reemployed annuitants of both the Civil Service and Foreign Service retirement systems are limited in the amount of compensation they may earn, when reemployment is on a part-time, intermittent, or temporary basis the compensation limit established for reemployed Civil Service annuitants is more stringent than that for reemployed Foreign Service annuitants.

In general, when Civil Service retirees are reemployed by a federal agency, 5 U.S.C. 8344 and 8468 require the agency to deduct from their salary an amount equal to the prorated annuity for the time worked during that pay period. In other words, each pay period, an amount equivalent to the annuity received during that pay period is deducted from the annuitants' salary. The agency forwards the amount deducted to OPM's retirement fund. OPM continues to pay the annuity. While the offset lowers the actual rate of compensation earned by the annuitant and, thus, reduces the incentive for returning to work, reemployment does afford the annuitant an opportunity to either receive a supplemental annuity or increase the base annuity.¹ Reemployed Civil Service annuitants may elect to make contributions to the retirement fund and, if reemployed for a certain amount of time on a full- or part-time basis, receive a supplemental annuity upon separation or have the base annuity recalculated to consider the period of reemployment.

In contrast to reemployed Civil Service annuitants, although total compensation is still limited, the salary of a reemployed Foreign Service annuitant is not offset. Also, Foreign Service annuitants reemployed in the Civil Service do not have the same opportunity as reemployed Civil Service annuitants to receive a supplemental annuity or have their base annuity increased as a result of the reemployment.²

If the Foreign Service annuitant is reemployed in a career, full-time position, the annuity is terminated effective the date of reemployment, and

¹It should be noted that the Federal Employees Pay Comparability Act of 1990 provided for a waiver of this Civil Service offset under certain circumstances, such as exceptional difficulty in recruitment or an emergency such as a direct threat to life or property.

²According to the Chief of the State Department's Retirement Division, Bureau of Personnel, Foreign Service retirees generally cannot be reemployed in the Foreign Service. However, they can be recalled back into the service under certain unusual circumstances. Under these circumstances, the recalled Foreign Service officer is no longer a retiree and, thus, is not affected by the annuity/salary compensation limit.

**Appendix II
Comparison of Compensation Limits Between
Civil Service Annuitants and Foreign
Service Annuitants**

the annuitant receives only the salary of the new position. Thus, although the salary is not reduced, in effect the compensation limit is the same as the Civil Service limit.

However, if reemployment is on a part-time, intermittent, or temporary basis, Foreign Service annuitants may continue to receive an annuity so long as the combination of salary and annuity received during a calendar year does not exceed the greater of either the salary at the time of retirement or the salary of the new position (see 22 U.S.C. 4064). Foreign Service annuitants reemployed on this basis should stop working when the compensation limit is reached. If the annuitant does not stop working and, thus, receives compensation in excess of the limit, a repayment of the excess is required.

The difference in compensation limits is most apparent when the annuitants are reemployed on a part-time, intermittent, or temporary basis. In this situation, all else held equal, the Foreign Service annuitant can earn more money than the Civil Service annuitant in a shorter amount of time. This is because the Civil Service annuitant's salary is reduced each pay period by the amount of the prorated annuity while the Foreign Service annuitant faces no such reduction and thus receives more per pay period.

On the basis of the legislative history of the 1980 Foreign Service Act, Congress specifically intended to provide unique benefits to members of the Foreign Service to ensure continued high-quality staffing in U.S. posts throughout the world.

Table II.1 compares the total compensation that can be earned by a part-time reemployed Civil Service annuitant and a Foreign Service annuitant. The example assumes a yearly salary at time of retirement of \$80,000 and that the annuitants were reemployed on January 1. It also assumes the annuitants work 20 hours per week in a position paying \$80,000 per year. As shown by the example, the Civil Service annuitant earns only \$15,000 more by working. The Foreign Service annuitant, in contrast, earns \$30,000 more by working. This \$15,000 in additional income earned by the Foreign Service annuitant would be earned by working a shorter amount of time than what would be required of the Civil Service annuitant because the annuity/salary compensation limit would not allow the Foreign Service annuitant to be compensated for the entire year. Working the entire year would cause the combination of annuity and salary to exceed the \$80,000 compensation limit (\$50,000 annuity + \$40,000 gross earnings = \$90,000).

**Appendix II
Comparison of Compensation Limits Between
Civil Service Annuitants and Foreign
Service Annuitants**

Table II.1: Example of Compensation Available to Civil Service and Foreign Service Annuitants Reemployed January 1 on a Part-time Basis

	Civil Service	Foreign Service
Yearly salary at time of retirement	\$80,000	\$80,000
Annuity	50,000	50,000
Yearly salary of new position	80,000	80,000
Gross earnings at 20 hours per week	40,000	30,000 ^a
Offset to earnings	25,000 ^b	0
Net earnings from salary	15,000	30,000
Earnings from annuity	50,000	50,000
Total compensation	\$65,000	\$80,000

^aIf the Foreign Service annuitant elects to receive the full annuity for the entire year, the annuitant should stop working once \$30,000 in salary is earned.

^bBecause the Civil Service annuitant is working half-time for the full year, the salary is offset by one-half of the \$50,000 annuity.

Information Required in Justifications for Other Than Full and Open Competition

In fiscal year 1989, the Federal Acquisition Regulation (FAR) required that each justification contain sufficient facts and rationale to support the exception to full and open competition in awarding a sole-source contract. As a minimum, the regulations required that the following information be included in justifications for other than full and open competition:

- Identification of the agency and the contracting activity, and specific identification of the document as a “Justification for other than full and open competition.”
- “Nature and/or description of the action being approved.
- A description of the supplies or services required to meet the agency’s needs (including the estimated value).
- An identification of the statutory authority permitting other than full and open competition.
- A demonstration that the proposed contractor’s unique qualifications or the nature of the acquisition requires use of the authority cited.
- A description of efforts made to ensure that offers are solicited from as many potential sources as practicable, including whether a Commerce Business Daily notice was or will be publicized and, if not, what exception to the publication requirement applies.
- A determination by the contracting officer that the anticipated cost to the government will be fair and reasonable.
- a description of the market survey conducted and the results, or a statement of the reasons a market survey was not conducted.
- Any other facts supporting the use of other than full and open competition, such as
 - an explanation of why the technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.
 - an estimate of the additional cost that would be incurred as a result of awarding the contract to a different contractor, along with how the estimate was derived, when only one responsible source is cited for follow-on acquisitions. The belief is that a second contractor may have to duplicate work already done by the contractor holding the current contract.
 - data, estimated cost, or other rationale as to the extent and nature of the harm to the government, when unusual and compelling urgency is cited.
- A listing of the sources, if any, that expressed in writing an interest in the acquisition.

**Appendix III
Information Required in Justifications for
Other Than Full and Open Competition**

- A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.
- Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.
- Evidence that any supporting data that is the responsibility of technical or requirements personnel and that form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

Comments From the Department of State Office of Inspector General

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



United States Department of State

The Inspector General

Washington, D.C. 20520

March 12, 1991

Mr. Richard L. Fogel
Assistant Comptroller General
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

Enclosed are our comments on the GAO draft report entitled, Experts and Consultants: Improper Hiring Process at State's Office of Inspector General.

I concur fully with the conclusions of the GAO report. First, that there was no attempt "to conceal internal State OIG problems." Rather, the report says, "...the omissions [in a final OIG audit report] appear to stem from reporting [in an earlier draft] before complete information about problems was known, and misunderstandings among State OIG staff." Thus, there was no "cover-up," nor will there ever be one in my office.

Second, that the State OIG acted within its authority to appoint experts and to contract with consultants. However, even though we did not exceed our authority, my office did make a number of technical errors: some of our position descriptions were inadequately drafted, and we moved on occasion in too great a haste to bring people on board.

Although I agree with the summary conclusions of the report, I question the presentation of much of its content.

The major flaw is that the entire document lacks a framework to place the actions we took into a context of legitimate and well-intentioned efforts to comply with my statutory mandate. Availability of individuals with the requisite level of foreign policy experience, and special technical expertise in the areas of security and arms control, was and is critical to the successful accomplishment of the OIG mandate.

See comment 1.

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The proposed title of the report smacks of sensationalism with its clear implication of improprieties. This is ironic inasmuch as the majority of recommendations in the report and all of the substantive ones are not directed to the OIG but to other organizations -- the Office of Personnel Management or the Secretary of State, and require action by the Department's Office of Personnel and Office of Acquisitions. Indeed, the only recommendations directed to OIG are that (1) we should ensure that our position descriptions are accurate, and (2) we should continue to use the contracting services of the Office of Acquisitions until we develop our own in-house contracting expertise. I agree with and accept both recommendations, but find it difficult to reconcile their real import with the sweep and severity of the draft title, the nearly eleven-month duration of the GAO review, and a report of more than 100 pages in length.

We have provided a chapter-by-chapter analysis of what we believe are inaccuracies and misleading observations in the report. I request that this letter, together with the enclosed analyses, be appended in their entirety to the report. In addition, where appropriate to do so, I trust that our specific comments will be inserted in the relevant portions of the report or the present language corrected accordingly.

I want to thank the members of the GAO team who participated in this review. They, as we had, wrestled long and hard with the definitional ambiguities of personnel regulations. Neither of us is the first to do so -- nor will we be the last. And, as always, it is a salutary -- if at times chastening -- experience for those who audit others to be audited.

Sincerely,



Sherman M. Funk

Enclosures

See comment 2.

Now on p. 15.
See comment 3.

EXECUTIVE SUMMARY

The penultimate paragraph on page 2 states that "Evidence about the omissions does not point to a deliberate attempt to conceal internal State OIG problems." However, the first paragraph on page 2-1 states: "In both instances we found no evidence to conclude that the State OIG omitted the references to deliberately conceal internal problems." The latter is a more accurate statement of fact, and should replace the present language in the Executive Summary, particularly inasmuch as many readers never get beyond the Summary.

Nothing is more devastating in Washington than a charge of "cover-up." The GAO team reviewed this allegation thoroughly and, as quoted above, "found no evidence to support" it. Anything less explicit in the Executive Summary is unfair to the auditee and is a disservice to the GAO team which examined the matter in such great depth.

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CHAPTER 1

Now on p. 11
See comment 4.

Footnote 2 on page 1-4 is not entirely accurate. We suggest deleting the second sentence, or, to make it accurate, inserting the word "courtesy" before "title."

Now on p. 12.
See comment 5.

As a further clarification, on page 1-6, and elsewhere in the report, the term "career ambassador" is a Presidentially appointed rank held by only a few individuals. The individuals appointed by the OIG are more appropriately referred to as "former ambassadors."

Now on p. 13.
See comment 6.

The last sentence of the first paragraph on page 1-8 states "We were unable to establish intent because much of the available evidence was testimonial and differed according to individual perceptions and understandings of the situation." This is a distortion of the evidence presented in the report, and contradicts GAO's own conclusions elsewhere in the report. The clear implication of this wording is that GAO felt "intent" was there, but couldn't substantiate it. The wording also implies that there was some evidence of intent, but views differed according to individuals. Although we of course do not know what anyone said during their interviews, such an implication is invalidated by the findings and conclusions presented elsewhere. We suggest that the GAO replace this sentence with the one found on page 2-1 -- "We found no evidence to conclude that the State OIG omitted the references to deliberately conceal internal problems." Alternatively, we propose the following: "We found no evidence of intent to conceal internal State OIG problems. Rather, the omissions resulted from a finding that the supporting information was missing or incomplete, and from misunderstandings on the part of OIG staff."

Now on p. 15.

CHAPTER 2

See comment 7.

The opening paragraph of this chapter fails to accurately distinguish between what is characterized as a "draft report to Congress" (first sentence of the Executive Summary, and elsewhere throughout the report) and the final report, submitted to the Congress on March 5, 1990. As currently constructed, GAO's report implies, erroneously, that two versions of the report were reviewed by entities outside of the OIG (the Department? the Congress?) and the allegedly "deliberate omissions" were detected. As GAO is well aware, however, and indeed, as indicated by the more than three months internal review of GAO's own draft report, revisions are made at numerous points throughout the report development cycle. The "draft" document which contained the inadequately developed discussion of OIG's appointment of experts and reporting of consulting contracts was a working level document which had not undergone internal OIG review, much less been submitted to the Department for written comments. As stated in the opening paragraph of this chapter, GAO "...found no evidence to conclude that the State OIG omitted the references to deliberately conceal internal problems." This wording is far more direct, and less suggestive of residual doubt about the integrity of the OIG's actions than the chapter title itself, or the sub-section in the chapter, Deliberate Concealment of State OIG Problems Not Evident. We request that GAO modify the headings to more appropriately reflect the fact that the extensive work of the GAO team led them to conclude that the OIG had indeed "...appropriately omitted references to itself from the March 5, 1990, report," as Senator Pryor had requested that they determine (page 1-7).

See comment 8.

See comment 9.

Now on p. 13.

See comment 10.

The draft does not give adequate recognition to the time constraints under which the OIG report was being developed and processed. A legislatively mandated report was overdue. It was required to be submitted with the Department's budget submission. Having missed that target, and having discussed extensions for the report several times with OMB and congressional staff, there was a sense of urgency which was much more of a factor than the passing reference on page 2-7 suggests. This issue was discussed fully with the GAO staff by the AIGA.

Now on p. 18.

See comment 8.

The GAO report describes, in painstaking detail, the removal of information from early versions of the report in a manner which indicates that such actions are rare. Nothing could be further from reality. The document was not even a "draft" in the sense that it was the official version provided to Department managers for written comment. It was a "draft" in the sense that it was one of many revisions in the report development stage. Changes to such versions are common, not rare, and information is typically removed, as well as added,

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reorganized, and recast. As a 20-year veteran of GAO, and GAO's report processing operation, my AIGA knows how to develop reports, including when to take out undeveloped or misleading information.

See pp. 19 and 20.

The sub-section titled Inspector General and Attorney Apparently Unaware of Appointment Problem also requires clarification. As written, this section suggests that the IG and the attorney were confused, or at least uninformed, about the issue of potentially improper appointments. Such was not the case. As a result of status briefings provided for the IG by OIG auditors concerning their audit of the Department's advisory and assistance services, the IG's attention was focused on the issue of potential repayment of compensation by Department contractors whom the auditors deemed to be personal service rather than professional service contractors. Given the paramount implications of this issue for the Department overall, the IG's attention and the ensuing legal research were focused on this issue. The fact that the refund issue was a primary IG focus, and the fact that there was disagreement as to the question of whether contractors could legally be subject to the same pay cap restrictions as appointees, does not indicate that the IG and attorney were unaware of the appointment problem. The confusion to which the GAO refers on P.2-11 was associated with the perceived failure of the draft report to properly distinguish between laws and regulations pertaining to appointments versus contracts. This confusion, and differences of opinion relating to applicability of those laws and regulations, underscored the need for further audit work, and validated the decision to defer such work to phase two. This was particularly critical because the phase one report was already overdue.

Now on p. 19

While GAO concurs that the appointment issue warranted further review (page 2-12), the draft report inexplicably concludes (page 2-15) that the "...omissions...appear to us to be matters of an error in judgment and poor communication." This non sequitur must be corrected in the final report.

Now on p. 21.

Now on p. 22.

See comment 11.

See p. 23.

Finally, we believe that GAO's recommendation that State OIG expert and consultant activities be evaluated by "an appropriate group," and that the results of this evaluation be incorporated in State OIG's report is unworkable from an audit standpoint. "Incorporating" connotes some verification by the OIG, which would be inconsistent with the decision, endorsed by GAO, that State's OIG will eliminate self-assessments from its own reports. We suggest that the recommendation be modified to propose that the Department's review of OIG expert and consultant activities be separately transmitted to interested Members of Congress.

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professionalism of such a speculative analysis, particularly in light of the acknowledged limitations in GAO's analysis, i.e., the inability to compare any specific agency-tailored requirements to an official State OIG position.

We find it particularly difficult to understand why GAO would go to such lengths to address the issue of expert appointments when all parties agree that, regardless of differences of opinion on subjective interpretations of available data, State OIG is clearly authorized to obtain the services of retired Foreign Service Officers under another appointment authority. Thus, no one was employed who could not otherwise have been employed.

The material at the bottom of page 3-11 and at the top of page 3-12 is misleading. The State OIG has no problem with cooperation by the Department -- not, at least, greater than any OIG which seeks acceptance and compliance with recommendations which at times may upset a status quo or lead to economical practices that might appear undesirable to some. To the contrary, we have experienced generally excellent cooperation. We use retired ambassadors and other retired Senior Foreign Service Officers, not to secure cooperation per se, but because our inspections often challenge perceived foreign policy priorities, and thus require the expertise of seasoned Foreign Service Officers. In addition, inspections usually require counseling Department employees, including Presidential appointees who may head our embassies and bureaus.

It is one thing to conduct business essentially with written reports, in which findings are presented discretely and flatly. (Thus, in our audit and investigative arms, where we do no counseling, there is no need for retired ambassadors or senior FSOs.) It is quite another thing in our inspections, and in our compliance followup reviews of inspections, where our senior inspectors meet one-on-one with chiefs of mission, deputy chiefs of mission and principal officers, and personally counsel them on such matters as management style, reporting, representation, contacts with host country officials, professional image in Washington, ethical behavior, etc. In situations such as these, it is not only helpful but essential that we establish a peer relationship of trust and confidence if our counseling is to be credible and thus effective. Because no other OIG undertakes, nor is required by law [Section 209 of the Foreign Service Act of 1980, incorporated by reference into the State OIG's legislated mandate] to undertake, such inspections with their counseling component, the State OIG is in this respect sui generis.

We therefore request deletion of the first recommendation on page 3-30 to the Secretary of State. It is unnecessary. We already receive full cooperation from the Department.

Now on p. 29.
See p. 40

Now on p. 38.

CHAPTER 4

This chapter starts with an inappropriate and misleading title: Awarded Contracts Were Improper. Such a chapter heading clearly connotes more than is supported by the material which follows it. We suggest that a more accurate title would be: Contracts Awarded Improperly. The difference in meaning is substantial.

See comment 13.

On page 4-1, GAO states that "...because most of the contracts involving retirees were used, in effect, to bypass the annuity/salary compensation limit, contracting was an inappropriate way of obtaining the retirees' services." It may be that contracting was inappropriate but not for the reason noted. State OIG utterly rejects the assertion that the contract mechanism was chosen to bypass the annuity/pay cap, nor is this assertion supported anywhere in the report, nor indeed can it be supported. Buried 18 pages into the chapter is the real reason we decided to use contractors, the justification we put forth to GAO and quoted here in its entirety: "According to State OIG officials, the decision of whether to have retirees work under appointment or contract was based on whether the retirees' experiences were specific enough to be needed on a limited basis or needed over an entire year." As GAO notes on page 4-17, and in chapter 1, State OIG appointees were serving under appointments for intermittent services, which means they were subject to a 130 work day limitation. If the requirements for which services were being obtained were expected to involve more than 130 days, as was the case when the determination was made to award contracts, then an appointment would have been an "inappropriate vehicle to obtain services" rather than the reverse, which is what GAO alleges.

Now on p. 42.

See pp. 54 and 55.

Now on p. 50.

We do not understand the relevance of the extended discussion (pages 4-20 to 4-22) on whether State OIG's contracts created employer-employee relationships. While the existence of such relationships could have a bearing on the contractor compensation question, GAO admits that, having reviewed all available information, they are uncertain as to the exact nature of the relationship. However, rather than omitting the long discussion, or, at least, noting that procurement officials in the Department determined that an employer-employee relationship did not exist, GAO leaves the issue hanging, with the clear implication that something was wrong, but they just couldn't pinpoint it.

See comment 14.

Now on pages 50-52.

With regard to the existence (and adequacy) of sole-source contract justifications, we refer to the comments on the report submitted by the Department's Office of Acquisitions.

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Office of Inspector General

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With respect to the three contracts awarded by the State OIG, GAO notes that the IG has the authority, under the Inspector General Act of 1978, to enter into contracts, yet goes on to imply (bottom of page 4-12, as well as on page 6 of the Executive Summary) that, somehow, the exercise of that authority was improper. This is not said directly, but rather by innuendo, i.e., "[The IG] was unable to recall why he had [directed his staff to prepare and award the three contracts]," and "State OIG officials could not explain why they did not use Acquisitions to prepare the 3 contracts awarded directly by the State OIG." On the first point, it is not surprising that an individual might lack total recall of events associated with acquiring the services of three individuals more than two years ago, during a period of time when the organization was expanding its direct hires from fewer than one hundred to nearly three hundred, including experts and contractors. As to officials' "inability" to explain the chosen course of action, two comments are offered: no "explanation" is required (the authority to enter into contracts is undisputed); and, the GAO apparently did not pursue the question far enough with cognizant officials. Had they done so, the report would have reflected the fact that the OIG had an immediate need to complete a review of a critical component of the Department, and to process a backlog of reports, a need too urgent to wait for an understaffed Office of Acquisitions to meet.

As noted in the report, and for the reasons described (pages 4-22, 4-23), the IG suspended all procurement of professional services in March 1990. If and when we ever resume such procurements -- an issue not yet decided -- we shall ensure that they are fully competitive, whether awarded by the Department or directly by us after we have increased our contracting capabilities. Also, in either case, we shall ensure that solicitations are not only advertised in the CBD but in publications and other material more likely to be read by potential bidders. We appreciate the point made in this regard on pages 4-11 and 4-12.

Now on pp. 47 and 5.
See comment 15.

See comment 16.

Now on p. 53.

See p. 50.

Now on pp. 49 and 50.

The following are GAO's comments on the Department of State Inspector General's March 12, 1991, letter.

GAO Comments

1. The report's framework establishing the Inspector General's need for competent and experienced Foreign Service officers and the statutory mandate creating this need is, in our opinion, adequately discussed on pages 10 to 12.
2. The report title was changed to more directly reflect the overall conclusions reached as a result of our evaluation. We direct relatively few recommendations to the State Inspector General because OIG has suspended appointments of and contracts with experts and consultants.
3. Page 4 in the executive summary has been modified to more consistently state our conclusion.
4. We added to footnote 2 of chapter 1 that the title of ambassador is retained as a courtesy.
5. We used the term "career ambassador" to make clear the individuals' Foreign Service experience. However, we have no objection to characterizing the ambassadors as "former" and have revised the text accordingly.
6. In our objectives, scope, and methodology section, we noted as a limitation to our study that we could not establish intent. Even given this limitation, elsewhere in the report we said that the overall evidence did not suggest deliberate concealment. Accordingly, we do not believe further elaboration is necessary.
7. Text on page 15 was revised to better distinguish between the draft and final reports.
8. Text on page 15 was clarified to better recognize that standard procedure allows for drafts to be reviewed and changed. However, the allegation and the Subcommittee's concern were not related to the stage of the draft report.
9. We modified both the chapter title (page 15) and the section heading (page 21) to more accurately represent the overall evidence.

10. In our opinion, the time constraints under which the OIG report was developed and processed were adequately recognized on pages 15 and 18.

11. In our opinion, the conclusion reached that the omissions appear to have resulted from an error in judgment and poor communication is not a non sequitur. The error in judgment refers to the AIGA's decision to report findings about expert and consultant appointments prematurely. The poor communication refers to the misunderstanding between the AIGA and the audit staff to remove the discussion about OIG contracts not reported to FPDS.

12. The text referred to was deleted.

13. The chapter title was changed.

14. The report's discussion as to whether OIG contracts created employer-employee relationships was included to address one of the Subcommittee's specific concerns. It relates to our objective to evaluate whether OIG followed appropriate procedures to contract with consultants. Although there is still uncertainty as to whether the relationship was that of independent contractor or government employee, the similarity in work coupled with the reasons given for contracting led us to question the appropriateness of the OIG's use of contracts.

15. We do not question the Inspector General's authority to enter into contracts. This authority, however, still requires compliance with applicable laws and regulations.

16. We disagree with the Inspector General's assertion that we did not pursue our questions about OIG awarded contracts with "cognizant officials." We first raised the question with the current "contracting officer," who referred us to the Inspector General. The Inspector General had specifically requested, in writing, that the contracts be awarded, and he later signed the contracts. When we redirected the question to the Inspector General, he was accompanied by key staff. Neither he nor they provided an answer other than that he could not recall the circumstances. We knew of no other cognizant officials to question nor did the Inspector General direct us to any other officials.

In his comments on a draft of our report, the Inspector General explained that the contracts were awarded on the basis of his own authority because the need for services was more immediate than could

be accommodated by the Office of Acquisitions. Assuming an immediate need existed, the Inspector General should have cited the unusual and compelling urgency exception from full and open competition and explained the circumstances supporting the exception. Instead, they were justified on the basis of efficiency and effectiveness, which is not permissible under CICA and the FAR.

Comments From the Department of State

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



United States Department of State

Washington, D.C. 20520

MAR 26 1991

Mr. Richard L. Fogel
Assistant Comptroller General
General Government Division
U.S. General Accounting Office
Washington D. C. 20548

Dear Mr. Fogel:

This letter is in response to your February 12, 1991 letter to the Secretary that forwarded copies of the draft report entitled, "Experts and Consultants: Improper Hiring Process at State's Office of the Inspector General."

Enclosed are related comments prepared by the Bureau of Administration and the Office of Civil Service Personnel Management.

We appreciate the opportunity to review and comment on the draft report.

Sincerely,

Robert L. Caffrey, Acting
Associate Comptroller
Office of Financial Management

Enclosures:
As stated.

GAO Draft Report Comments:
EXPERTS AND CONSULTANTS IMPROPER HIRING
PROCESS AT STATE'S OFFICE OF INSPECTOR GENERAL
(GAO Job Code 966429)

We have reviewed the draft report and appreciate having had the opportunity to do so. First, we would like to point out that parts of the guidance contained in FPM Chapter 304 and OMB Circular A-120 as written are ambiguous. Because the guidance is subject to different interpretations, errors have been made in uniformly applying the contents of these documents. In spite of this, however, the Department has improved its own guidance and improved the controls over the appointment of experts and consultants as you will see by the following comments.

There is only one specific comment we would like to make regarding the GAO draft report. Page 1-3 contains the following sentence: "Expert appointees can supervise other government employees; independent contractor consultants cannot." While an expert can perform operating functions on a temporary/intermittent basis and have Federal employees working with them, they may not supervise a Federal employee due to the temporary/intermittent nature of the appointment. In addition, appointed or contracted consultants may not supervise Federal employees. The way the sentence is constructed implies that appointed consultants may supervise Federal employees.

GAO's on site work for review of the Inspector General's (IG) use of experts and consultants ended in October, 1990. During that same period, the IG's office was reviewing the use of Advisory and Assistance Services for the Department as a whole. A number of the problems defined in the IG's final report can also be found in the draft GAO report. The IG's report resulted in twenty-one recommendations for improvement that largely answer the recommendations contained in the draft GAO report. The Bureau of Personnel had responsibility for four of those recommendations. They are as follows:

1. Issue instructions to discontinue appointing experts or consultants to inappropriately augment the work force;
2. Provide training for personnel officials who review requests for experts and consultants so they can determine if the person is performing as an expert or consultant as described in FPM Chapter 304 and OMB circular A-120;
3. Provide training for executive officers in the offices and bureaus so they will understand the definitions and proper use of experts and consultants; and
4. Review duties of all experts and consultants to determine if the duties are appropriately classified as expert or consultant.

See p. 40.

Now on p. 11.
See comment 1.

See p. 40

The Office of Civil Service Personnel Management (PER/CSP) was given responsibility for implementing the above recommendations and has since taken action of all of them. Action on those recommendations can be placed into three categories, as follows:

1. Appointment Reviews - The Staffing Services Division (PFR/CSP/SSD) reviewed all 265 expert and consultant appointments. The bureaus were required to provide further information on 232 of them. After all reviews, 101 were terminated and 55 were converted to other types of appointments.
2. Regulatory/Procedural Revisions - PER/CSP/PPD revised the Department's regulations (3 FAM 1514) to clarify the roles of experts and consultants and to eliminate any reference to experts performing supervisory work. The revision was published on August 10, 1990. In addition, our Standard Operating Procedure for the appointment of experts and consultants was revised to clarify procedures, reemphasize the roles of experts and consultants, and strengthen the review process. We also reviewed guidance drafted by the Office of Resource Management and Organization Analysis (PER/RMA) titled, "Guidelines for Developing Expert/Consultant PD's", and made recommendations for improvement and clarification.
3. Training - Instruction was provided to the bureau executive directors by Mr. Kenneth Hunter, the Deputy Assistant Secretary for Personnel, at one of the regularly scheduled meetings. Training was provided to bureau personnelists on March 20 and 21, 1990 at the Department's Personnel Information Exchange (PIE) sessions. The training included a brief discussion of the OIG report, the requirements of the various policies and regulations covering experts and consultants (i.e.; OMB Circular A-120, FPM Chapter 304, and 3 FAM 1514), and an intensive review of the revised SOP.

Three additional steps are in progress that are not specifically directed at experts and consultants, but will further improve the Department's controls and answer the recommendations in the draft report. They are as follows: 1) The Bureau of Personnel was reorganized on March 1, 1991, consolidating control over position classification and staffing; 2) the Department's PME program is scheduled for implementation in 1991; and 3) OPM is planning a government wide review that will include the Department in 1991.

As of March 1, 1991, the Department's complement of experts and consultants was 107, with none in the IG's office. Each case is now more thoroughly reviewed prior to appointment and PER/CSP has worked closely with the bureaus to ensure that expert and consultant appointments meet the requirements of law. PER/CSP also assists the bureaus in finding other means of appointment in cases where the individual desired does not meet the requirements of an expert or consultant appointment.

Appendix V
Comments From the Department of State

GAO Draft Report Comments: Experts and Consultants: Improper
Hiring Process at State's OIG
(GAO JOB CODE 966429)

A/OPE Comments:

- We hope generally recognized auditing standards, including indexed and referenced workpapers, are employed to support the GAO report. Verification necessary in general auditing standards will correct disputed issues.
- There is some misleading information in the draft which has already been discussed with the auditors about conditions and criteria used to support the report's conclusions. For example, the report notes two of nine OIG contracts awarded did not contain written justifications and approvals to support noncompetitive acquisition. Both A/OPE and A/OPR/ACQ personnel advised GAO auditors all nine were supported with written justifications and approvals. (The real problem apparently was that documents had been misplaced.)
- The Federal Acquisition Regulation is cited in the report's advice that "contracting officers are to prepare justifications for other than full and open competition." This type of statement is misleading in suggesting the OIG was out of order in providing essential information for the justifications that only a program office could give.

A/OPR Comments:

- The procurement analyst who prepared the contract documents was under the direct supervision of A/OPR/ACQ's Competition Advocate, who reviewed the documents. Therefore, although the Competition Advocate did not actually sign specific justifications, the Competition Advocate was aware of the contractual actions. (See text pages 4-8)
- A/OPR/ACQ relies on certifications from PER/EX regarding the existence (or lack thereof) of current appointments held by potential contractors. Contracts were awarded only to those people identified as not holding appointments. No contracts were knowingly awarded to contractors holding appointments at the time of contract performance. (See text pages 4-9)

See p. 43.

See comment 2.

See comment 3.

Now on p. 46.

See comment 4.

Now on p. 46.

The following are GAO's comments on the Department of State's March 26, 1991, letter.

GAO Comments

1. According to the OPM official who authored the FPM guidance on experts and consultants, experts may supervise and perform operational functions but may not be hired to do ongoing operational functions. The text in footnote 1 of chapter 1 was revised to clarify that appointed consultants may not supervise.
2. We disagree that the report implies contracting officers should prepare justifications without essential information from program offices. In the circumstance discussed, the contracting officer did not prepare the justification on the basis of program office input; rather, he relied on the program office to prepare the justification itself.
3. The text on page 45 was amended to clarify that the signature indicating approval was not obtained.
4. We acknowledge that the two contracts may not have been knowingly awarded to individuals holding government appointments. However, in one of the two cases the contract file did contain a memo from the Bureau of Personnel to the Office of Acquisitions stating that the individual currently held an appointment with OIG and that this would need to be terminated before the contract was signed.

Comments From the Office of Personnel Management



OFFICE OF THE DIRECTOR

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

MAR 14 1991

Mr. Richard L. Fogel
Assistant Comptroller General
US General Accounting Office
Washington, DC 20548

Dear Mr. Fogel,

Thank you for giving us the opportunity to respond to your recommendations in your report Experts and Consultants: Improper Hiring Process at State's Office of Inspector General.

In response to your first recommendation we have scheduled a personnel management evaluation of the State Department for early Spring 1991. This review is part of a Governmentwide study of staffing timeliness and a regulatory review of career and career-conditional appointments, temporary appointments, veterans readjustment appointments, and merit staffing. In addition, we will review other areas of personnel management that require attention, based on an analysis of responses from supervisors and managers to a questionnaire we will administer before going on site. The State Department's personnel management evaluation (PME) staff has been asked to join us on this review.

Last year, we were instrumental in helping the State Department establish its own personnel management evaluation capability. We arranged both formal PME training and a developmental assignment for the program chief in another agency. Finally, in connection with our FY 90 review of the Bureau of Consular Affairs, Office of Passport Services, we arranged for the State Department's Inspector General's staff and the Bureau's PME staff to begin working together on PME matters of mutual interest.

Your second recommendation deals with Foreign Service annuitants rehired by Federal agencies other than the State Department. As you know the Foreign Service Retirement System (FSR) is administered by the State Department and we do not maintain any of their retirement records. Thus, we do not have any data on the reemployment of FSR annuitants. Under FERS and CSRS, when an annuitant is reemployed, under most circumstances the law requires either termination of the annuity, or dollar-for-dollar set off of annuity from salary (under very limited circumstances, the reemployed annuitant is permitted to keep both). The FSR

See pp. 40 and 41.

Appendix VI
Comments From the Office of
Personnel Management

reemployment rules are completely different, and permit payment of the FSR annuity and full salary until an annual limit is met (the rate of pay of the position from which the person retired, or that of the position in which the person is reemployed, whichever is higher).

Apparently there have been only a few isolated cases of FSR retirees who were reemployed in other agencies and who continued to accept payments after the limit was met. A potential solution to this problem would be to include computer matching of the CPDF against the FSR annuity rolls, sending out an FPM letter to agencies reminding them of the treatment of reemployed FSR annuitants, or the State Department sending an annual notice or questionnaire to FSR annuitants.

Once again thank you for giving us the opportunity to respond to your recommendations.

Sincerely,



Constance Berry Newman
Director

See pp 40 and 41.

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